SUPREME COURT OF THE UNITED STATES.

No. 168.

THE UNITED STATES, EX. REL. LOUIS A. VON HOFFMAN, PLAINTIFF IN ERROR,

vs.

THE CITY OF QUINCY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the southern district of Illinios, at a term began and held in the city of Springfield, in said district, before the Hon. David Davis, presiding judge, one of the justices of the Supreme Court of the United States and the Hon. Samuel H. Treat, associate judge, judge of said district, on Thursday, the twenty-third day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year.

Petition for mandamus.

THE UNITED STATES, *ex rel.* LOUIS A. VON HOFFMAN,
vs.
THE CITY OF QUINCY.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that heretofore, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and sixty-four, came the said petitioner by his attorneys, Merrick & McKinnon, and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois his petition for a writ of mandamus against the
2 said respondent, also at the same time filed his bond for costs in said entitled cause; which said bond for costs and petition are in the words and figures following, to wit:

Circuit court, June term, A. D. 1864.

U. S., *ex rel.* LOUIS A. VON HOFFMAN,
vs.
THE CITY OF QUINCY.
Petition for mandamus.

UNITED STATES OF AMERICA, *Southern District of Illinois, ss:*

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plantiff of any costs ordered or adjudged to be paid by relator hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 18th day of June, A. D. 1864.

MERRICK & McKINNON.
V. HICKOX.

Endorsed: Filed May 20th, 1864.

P. P. ENOS, *Clerk.*

UNITED STATES OF AMERICA:

In the circuit court of the United States for the eighth circuit and southern district of Illinois.

To the honorable the judges of the circuit court of the United States for the circuit and district aforesaid:

3 Your petitioner, Louis A. Von Hoffman, who is a citzen of the State of New York and an inhabitant of the city of New York, in said State, unto your honors most respecfully showeth that at the June term, A. D. 1863, of said court, your petitioner was and for a long time previous thereto had been the owned and holder of certain coupons or interest notes of the city of Quincy, a corporation created and existed under and by virtue of the laws of the State of Illinois, and having its officers and place of bus-

iness in the district aforesaid, which said coupons or interest notes, then past and due and unpaid, when issued and negotiated were attached to and were for the interest to accrue and become due on certain bonds of the city of Quincy before that time made and issued by the city of Quincy in payment of and for certain stock taken and subscribed by the said city of Quincy in and to the capital stock of the Northern Cross Railroad Company and the Quincy and Toledo Railroad Company, under and in pursuance of the general law and certain acts of the legislature of the State of Illinois, as by the said acts, copies whereof are hereto annexed and marked Exhibits 1, 2, 3, will more fully appear, reference being thereunto had, and to which said general law and acts of the legislature your petitioner prays leave to refer.

And your petioner further showeth that by the provisions of said several acts of the legislature of the State of Illinois, the said city of Quincy is authorized and empowered to levy and collect a special annual tax upon the property, real and personal, situated in said city, at the same time
4 and in the same manner as the other taxes levied by said city, sufficient for the payment of the annual interest which should occur and become due upon any bonds to be thereafter issued by said city of Quincy for railroad purposes, under the proivisions of an act supplemental to an act entitled An act to provide for a general system of railroad incorporations, in force the 6th of November, A. D. 1849, which said tax, when collected, it is further provided should, by the said city, be set aside and held seperate and distinct from the other portions of the city revenue as a fund specially pledged for the payment of the annual interest on the bonds aforesaid, and should be by the said city of Quincy, from time to time, applied to the payment of the interest on said bonds as the same may became due and payable, and to no other purpose whatever.

And your petitioner further showeth that the said city of Quincy, having for a long space of time after the said coupons or interest notes of your petitioner became due and payable, wholly neglected, failed, and refused to pay the same or any part thereof, and also wholly neglected, failed, and refused to levy and collect or cause to be levied and collected a tax, as provided and required by the acts aforesaid for the purpose of paying the same. Your petitioner commenced a suit thereon in said court to the June term, A. D. 1863, and afterwards, to wit, on 10th day of June, A. D. 1863, by the consideration and judgment of said court, recovered against the said city of Quincy, defendant therein, the sum of twenty-two thousand two hundred and six dolllars and sixty-nine cents, for the damage he had sustained
5 as well by reason of the non-payment of said coupons or interest notes as for the cost and charges of your petitioner about his said suit in that behalf expended, which were adjudged to him by said court, whereof the said city of Quincy was then and there convicted, as by the record of said judgment in the office of the clerk of said court, reference being thereunto had, and to which, for greater certainty, your petitioner prays leave to refer, will more fully and at large appear.

And your petitioner further showeth that the said judgment, by him recovered in manner aforesaid, remaining in full force and effect, and the damages and costs aforesaid unpaid and unsatisfied, your petitioners, on or about the 15th day of July, A. D. 1863, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the United States, called fieri facias, directed to the United States marshal for said southern district of Illinois, that being the district in which said city of Quincy exists, by which said writ the said marshal was commanded "that of the goods and chattels, lands and tenements of the city of Quincy, defendant, in your district, you cause to be made twenty-two

thousand and two hundred and six dollars and sixty-nine cents," which your petitioner in the said court recovered against the said city of Quincy, and that he should have the money in the clerk's office in the city of Springfield, in said district, in ninety days from the date thereof, to satisfy the said judgment, and that he should also have then and there the said writ.

And your petitioner further showeth that the said writ of fieri facias, before the delivery thereof to the said marshal was duly endorsed and afterwards, on or about the 15th day of July, A. D. 1863, delivered to the
6 said marshal to be executed in due form of law, and that the said marshal afterwards and on or about the 17th day of July, A. D. 1863, returned on the said writ to him in that behalf directed and delivered, as aforesaid, that "by virtue of the execution I did, on the sixteenth day of July, A. D. 1863, call upon Thomas Redmond, the mayor, Presley W. Lane, the clerk, and Caleb Bloom, the treasurer of the city of Quincy, the within-named defendant, and demanded payment of the same, which was refused, the said mayor and clerk replying that they had no money with which to pay the same, and the said treasurer replying no money in the treasury; and being unable to find any property of the within-named defendant whereon to levy, I return this execution wholly unsatisfied," as by the said writ of fieri facias and the directions and return of the said marshal endorsed thereon, filed in the office of the clerk of said court on the day and year last aforesaid, will more fully appear, and to which or a copy thereof your petitioners prays leave to refer.

And your petitioner further showeth that the said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated, and that the said city of Quincy, has not paid the same or any part thereof to your petitioner, nor has the said city of Quincy, as provided and required by the acts of the legislature of the State of Illinois hereinbefore mentioned and referred to levied and collected a special annual tax upon the property, real and personal, situated in said city, sufficient to pay the annual interest or any part thereof, which hath accrued and become due and
7 owing from said city upon its bonds heretofore issued as aforesaid, as the said city of Quincy in good faith ought to have done, but so to do the said city, although often requested, has hitherto wholly neglected and refused.

And your petitioner further sheweth that there is now actually and equitably due and owing him upon his judgment aforesaid the sum of twenty-two thousand and two hundred and six dollars and sixty-nine cents, and interest from the time of the rendition of said judgment, over and above all claims of the said city by way of set-off or otherwise.

And your petitioner further showeth that he is entirely remediless in the premises at and by the ordinary legal remedies, and that proceeding by mandamus hereinafter prayed for is the only proper remedy whereby your petitioner can obtain relief. Your petitioner therefore humbly prays that a writ of mandamus may be awarded by your honors, directed to the said city of Quincy and its officers, commanding the said city of Quincy, its proper officers, forthwith and without delay to pay over to your petitioner or his attorneys of record any and all monies in their or any of their hands belonging to the said city of Quincy, not otherwise appropriated, not exceeding the amount of your petitioner's said judgment, interest, and costs; and also directed to and commanding the city council of the city of Quincy aforesaid, in case the said city or its proper officers hath not funds or money belonging to said city wherewith to pay said judgment, interest, and costs of your petitioner, to levy and collect without delay, as provided and
8 required by the acts of the legislature of Illinois aforesaid, a special tax upon the property, real and personal, situated in said city of

Quincy sufficient to pay the said judgment, interest, and costs of your petitioner, and when collected to pay the same over to your petitioner or his said attorneys.

And your petitioner will ever pray, &c.

LOUIS A. VON HOFFMAN,
By JNO. J. McKINNON, *his Att'y and Ag't.*

MERRICK & McKINNON, *Atty's for Petitioner.*

9 EXHIBIT 1.

An act to authorize the city of Quincy to levy and collect a special tax for the purposes therein mentioned.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly,* That the city of Quincy is hereby authorized to levy and collect a special annual tax upon the property, real and personal, situated in said city sufficient for the payment of the annual interest which may accrue upon any bonds to be hereafter issued by said city for railroad purposes under the provisions of an act entitled "An act supplemental to an act entitled an act to provide for a general system of railroad incorporation," in force the 6th day of November, A. D. 1849.

SEC. 2. The special tax aforesaid shall be levied and collected at the same time and in the same manner as the other taxes levied by said city, and the said city shall have the same rights, powers, and remedies to enforce the collection of the same by the sale of property or otherwise, as is or may be provided for in other cases relating to the city revenue.

SEC. 3. Said tax when collected shall by the said city be set apart and held seperate and distinct from the other portions of the city revenue as a fund specially pledged for the payment of the annual interest on the
10 bonds aforesaid, and shall be by the said city, from time to time, applied to the payment of said interest as the same becomes due and payable, and to no other purpose whatever.

Approved February 17th, 1851.

11 EXHIBIT 2.

An act to authorize the city of Quincy to subscribe to the stock of the Northern Cross Railroad Company.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly,* That the city of Quincy is hereby authorized to subscribe for shares of stock in the Northern Cross Railroad Company in any sum not exceeding one hundred thousand dollars in addition to the subscription made by the city to the stock of said company under the provisions of an act entitled "An act supplemental to an act entitled an act to provide for a general system of railroad incorporations," approved November sixth, eighteen hundred and forty-nine, and which stock so subscribed for shall be under the control of the common council of said city in all respects as stock subscribed by individuals.

SEC. 2. That for the payment of the stock so subscribed the common council of the city is hereby authorized to issue to said company the bonds of said city at par, bearing interest not exceeding eight per cent. per annum, payable semi-annually, with interest coupons annexed, and executed by the mayor of the city under the seal thereof, and countersigned by the city clerk, to an amount equal to the par value of the shares of stock subscribed, and to pledge the faith of the city for the semi-annual payment of the interest and the ultimate redemption of the principal.

12 SEC. 3. That before the additional stock aforesaid shall be subscribed an election shall be held to ascertain whether the citizens of said city are desirous that such subscription be made, and which said election shall be called by the common council of the city and held and conducted and returns thereof made in the manner required by the fourth section of the act mentioned in the first section of this act. In case a majority of the voters voting at said election shall be in favor of the subscription, such authorized subscription shall then be made by the common council of said city. The bonds which shall be issued under the provisions of this act shall be issued for the amount of and at the time the assessments upon the other stockholders of said company shall be regularly assessed and made payable. *Provided*, That the common council of the city may at any time issue to the said company the full amount of the bonds to be issued in payment of such subscription whenever in their discretion they may deem it advisable.

SEC. 4. That the city council of the city of Quincy is hereby authorized to levy and collect a special annual tax on all real and personal property situated in said city, for the payment of the interest on said bonds in the same manner as provided by an act entitled "An act to authorize the city of Quincy to collect a special tax for the purposes therein named," ap-
13 proved February seventeenth, eighteen hundred and fifty-one, and the provisions of the act aforesaid in relation to the levy, collection, and appropriation of the tax therein mentioned, shall in every respect apply to the tax to be levied by virtue of this act. This act to take effect and be in force from and after its passage.

Approved January 26th, 1853.

14 EXHIBIT 3.

An act to incorporate the Quincy and Toledo Railroad Company, to legalize the subscription of the city of Quincy and the county of Brown to the capital stock of the Northern Cross Railroad Company and the bonds issued, or to be issued by said city and county in payment for said stocks, to amend the charter of the Great Western Railroad Company of the State of Illinois, and legalize and confirm the contract of said company with James W. Singleton.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly*, That James W. Singleton, his associates, successors, and assigns are hereby created a body corporate and politic, under and by the name and style of the Quincy and Toledo Railroad Company, with perpetual succession, and by that name shall be and are hereby made capable in law and equity to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity, in this State and elsewhere, to make, have, and use a common seal, and the same to renew and alter at pleasure, and shall be and are hereby vested with all the powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act. And the said corporation hereby created is authorized and empowered to locate and construct and finally complete and put in operation a railroad from the east end of the depot ground of the Northern Cross Railroad Company at Camp
15 Point, in the county of Adams, to the east side of the Illinois River, at or near Naples or Mendoria, and so to connect the same with the track of the Great Western Railroad of Illinois, provided that the construction of the contemplated bridge shall not obstruct the navigation of the Illinois River.

SEC. 2. And for the purpose of constructing, maintaining, equiping, and operating said railroad, the corporation hereby created shall have and may

use, exercise, and enjoy all the right, powers, privileges, franchises, and immunities which by the several acts of the legislature of Illinois are conferred on the Northern Cross Railroad Company, together with the power to mortgage, lease, or sell said road to any other company or corporation.

SEC. 3. The Great Western Railroad Company of the State of Illinois be, and they are hereby, authorized and empowered by the president to indorse the bonds of the corporation hereby created, and to guarantee and secure the payment of the principal and interest of said bonds, and at the place of payment thereof, as the same may be become due and payable. The words "Guaranteed by the Great Western Railroad Company of the State of Illinois," written or printed upon the said bond or bonds and signed by the president of said company shall be, and is hereby declared to be, a covenant of said Great Western Railway Company to and with the holder or holders of said bond or bonds to pay such holder or holders the principal and interest thereof as the same may become due and payable, and the contract between the said Great Western
16 Railroad Company and James W. Singleton, dated the twelfth day of September, 1856, is hereby declared to be valid and binding upon the parties thereto in all courts of law and equity in this State and elsewhere as to their respective undertakings therein, the power and authority to execute the same being hereby granted to the parties respectively.

SEC. 4. That the act of John Wood, mayor of the city of Quincy, dated the (6) sixth day of August, 1856, whereby the said John Wood, on behalf of the said city subscribed in the capital stock of the Northern Cross Railroad pursuant to an ordinance of the city council of said city, dated the fourth day of August, 1856, authorizing, empowering, and directing the said John Wood, mayor as aforesaid, to subscribe two hundred thousand dollars to the capital stock of said Northern Cross Railroad Company, together with the acts, doings, and agreements of the city council of the said city of Quincy, and the same are hereby legalized, ratified, and confirmed, and all bonds of the said city of Quincy issued or to be issued in payment of said subscription of two hundred thousand dollars shall in all respects be, and are hereby, made a debt of said city of Quincy, due to the holder or holders of such bonds contracted by said city of Quincy under authority of law, provided that said bonds shall be and remain in the hands of Isaac O. Woodruff, of said city of Quincy, until said road is graded from Camp Point, in the county of Adams, to Mount Sterling, in Brown County; thereupon the said Isaac O. Woodruff shall deliver
17 one hundred thousand dollars of said bonds and retain the remainder thereof in his hands until said road is graded to the Illinois River, provided nothing in this act shall be so construed as to prevent the city council of said city from authorizing an earlier delivery of said bonds if in their judgment the interest of the city requires it. And the said city council are hereby authorized and empowered to levy and collect a special tax for the payment of the interest of said bonds.

SEC. 5. The subscription of Jacob Vandeventer, county judge of the county of Brown, made for and on behalf of said county, of one hundred thousand dollars to the capital stock of the Northern Cross Railroad Company be, and the act of said county judge is hereby, legalized, ratified, and confirmed, and the said county judge of the county of Brown is hereby authorized, empowered, and directed to make, execute, and deliver to the person or persons, company or corporation, entitled to receive the same one hundred bonds of the county of Brown for one thousand dollars each, bearing a rate of interest not greater than eight per cent. per annum, the said interest payable semi-annually, in the city of New York, at the Metropolitan Bank, on the first days of January and July of each year, and the principal of said

bonds payable in ten years at the same place, in the city of New York, upon receiving an equal amount of the stock of the Great Western Railroad Company of the State of Illinois, and the said bonds so to be is-
18 sued as aforesaid shall, to all intents and purposes, be and remain until the interest and principal thereof is fully paid a debt of the said county of Brown, due to the holder or holders of said bonds, contracted by the said county of Brown under authority of law.

SEC. 6. And it shall be lawful for said city or said county to make their bonds payable at any banking-house in the city of New York or Boston, which may be agreed upon by the parties interested.

SEC. 7. This act is in force from and after its passage.

Approved Jan. 31, 1857.

Endorsed: Filed May 20, 1864.

P. P. ENOS, *Clerk.*

19 And afterwards, to wit, on the twenty-second day of June, in the year last aforesaid, the said respondent came, by its attorneys, Messrs. Skinner and Marsh, and filed in the office of the clerk of said court its return to the petition of relator, which said return is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States for the southern district of Illinois.

THE UNITED STATES OF AMERICA, upon the relation of Louis A. Von Hoffman, *vs.* THE CITY OF QUINCY. } Mandamus.

And now comes the said city of Quincy, and for plea and return to the alternative writ of mandamus herein, and for cause why no peremptory writ should issue from this honorable court herein, doth set forth, certify, and return that neither at the time of the demand in said writ mentioned, nor at the time of the service of said alternative writ, nor from thence to now at the time of this return, was or is there any money in the treasury of said city of Quincy wherewith to pay or satisfy the said recovery in said alternative writ mentioned, nor any part thereof, as in and by said writ is
20 supposed.

And this respondent, for further cause why peremptory writ of mandamus should not issue herein, certifies and returns that by the provisions of an act of the general assembly of the State of Illinois, entitled "An act amendatory of the several acts relating to the city of Quincy, to provide for raising a revenue therein, and regulating costs arising under the charter and ordinances of said city," approved February 14, 1863, and a duly certified copy whereof is hereto attached, marked Schedule A, and made a part of this return, and to which this honorable court is here referred for greater certainty, it is provided, that is to say:

SEC. 4. The city council of said city shall have power to levy and collect annually taxes on real and personal property within the limits of said city, as follows: On real and personal property within, or which may hereafter be within, portions of said city lighted with gas, to meet the expenses thereof, not exceeding twenty-eight cents on each one hundred dollars per annum on the annual assessed value thereof. On all real and personal property within the limits of said city, to meet the expenses of obtaining school grounds, and erecting, repairing, and improving school buildings and school grounds, and providing teachers and maintaining public schools in said

city, and to be devoted exclusively for such purposes, not exceeding twenty-five cents on each one hundred dollars per annum on the annual assessed value thereof. *Provided*, That no more than eighteen cents on each
21 one hundred dollars aforesaid shall be levied in any year for such purposes without the concurrence of a majority of the votes of legal voters of said city, to be cast at an election to be ordered by said city council, and held to determine the rate per cent. so to be levied. On all real and personal property within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof.

SEC. 5. All laws and parts of laws, other than the provisions hereof, touching the levy or collection of taxes on property within said city, except those regulating such collection, and all laws conflicting herewith, are hereby repealed; but this act shall not affect taxes of said city relating to streets or alleys, or to licenses of whatever nature, nor any sources of revenue other than taxes upon real or personal property, and which said act remains in full force and unrepealed.

And this respondent further certifies and returns that the city council of said city of Quincy, in pursuance of the said law and the ordinances of said city, did, to wit, on the 16th day of April, A. D. 1864, at a meeting of said council in said city, duly levy a tax for the year 1864; that is to say, *Resolved*, That it is hereby ordered that a tax of sixteen cents on each one hundred dollars, for school purposes, and fifty cents on each one hun-
22 dred dollars, to meet the general expenses and pay the debts of the city, and, in addition in the lamp district, to defray the expenses of lighting with gas, twenty-eight cents on each one hundred dollars, be, and is hereby, levied on all real and personal property returned on the assessment roll of the city of Quincy for the year ending March 31, 1865, in pursuance of the act of the general assembly approved February 14, 1863; and then and there did thereby duly levy a tax for said year on all the real and personal property within the limits of said city of fifty cents on each one hundred dollars of the assessed value thereof to pay the debts and meet the general expenses of said city, as is contemplated by the third clause of the fourth section of said act. And that the said levy or levies relating to all said several taxes so levied aforesaid is and are in full force, and the said taxes, by virtue of said levy or levies, are now in due course and process of collection, according to the provisions of said act, and the charter, laws, and ordinances of said city, the tax books for such purpose now being in the hands and possession of the collector of said city for such due collection in due form according to the said act, the laws, charter, and ordinances of said city aforesaid relating to taxation by said city within the limits thereof and are unreturned.

And so this respondent returns and says that the said city of
23 Quincy, and the officers thereof, have exhausted all power touching the levy and collection of taxes within the limits of said city to pay the debts and meet the general expenses of said city for the current year, that is, for the year 1864, and has not, nor has either of them, failed to perform any duty in the premises, and the same tax of fifty cents on each one hundred dollars aforesaid is duly by said city appropriated, first, to meet and pay the general expenses of said city (except those of lighting in said city with gas, and the expenses of schools in said city, as is contemplated in said first and second clauses of said fourth section of said act aforesaid) of said current year 1864, and the residue thereof to pay the debts of said city. And so the said respondent says that neither the said city of Quincy, nor any of the officers thereof, have in any manner refused to pay the said recovery out of any moneys of said city not otherwise appropriated and necessary to

meet the current expenses of the public purposes of said city and the maintaining of the municipal government thereof, nor do they, nor any of them, intend so to do, nor has the city council of said city failed or refused to levy and collect, according to the laws and ordinances relating to said city, taxes to pay the debts and meet the general expenses of said city to the full extent and amount authorized by said act, of fifty cents on the one hundred dollars of the assessed value of all real and personal property within the limits of said city, and the proceeds thereof duly to apply to such purposes; nor is there any intention to fail or refuse so to do, nor fully to execute the corporate powers of said city for such purposes to the entire extent thereof.

And this respondent further says that the fiscal year of said city of Quincy, by the practice and usage thereof, commences on the first day of April and ends on the thirty-first day of March in each year, and that the annual taxes of said city, by the charter and ordinances thereof, are levied in the spring of each year, and are collected during the summer and fall of each year. And the said city has levied for said year no other taxes than as is provided for in and by said act of the general assembly aforesaid, approved February 14, 1863. And said fifty cents on the one hundred dollars, when collected, this respondent certifies will not be sufficient to pay the current expenses of said city for said year 1864, and the debts of the said city.

And said city of Quincy, for return to so much of said writ as alleges or assumes that the debt and causes of action in and by said writ alleged to have been held and owned by the relator, and to be the foundation of the recovery in said writ mentioned, was for interest accrued upon bonds issued by said city under the provisions of "An act supplemental to an act entitled an act to provide for a general system of railroad incorporations," in force November 6th, 1849, doth the same here traverse and deny, and doth here traverse and deny so much of said writ as alleges or assumes that the said recovery was or is the same aforesaid causes of action; that is to say, interest accrued upon bonds issued by said city under the provisions of the act last aforesaid. And the said city, that the truth may here be fully shown to this honorable court in regard to the said alleged causes of action and recovery, doth certify and return that about the year A. D. 1851 said city, under and in pursuance of the act of the general assembly in force November 6, 1849, and last mentioned, did issue to the Northern Cross Railroad Company, a railroad corporation of said State, bonds of said city to the amount of one hundred thousand dollars, and did afterwards, about the year A. D. 1854, under and in pursuance of the act of the general assembly of said State, approved January 26, 1853, in said writ mentioned, issue to said corporation its other bonds to the amount of one hundred thousand dollars; and afterwards, about the year A. D. 1856, the said city did make its other bonds, without any authority whatever, amounting to two hundred thousand dollars, payable to said corporation, but intended to be used to aid the building of a railroad, by a corporation thereafter by the sanction of the said general assembly to be created, from Camp Point, in Adams County, in said State, to the Illinois River, opposite Mendoria, in said State; that afterwards, in the year 1857, the said act of said general assembly, approved January 31, 1857, in said writ mentioned, was passed, whereby the making of said last-mentioned bonds was ratified and the same made a debt of said city, and the said bonds severally aforesaid mentioned were issued under no other law or authority than as aforesaid; that to each of said bonds interest coupons were attached, as in said writ is alleged, and that the said recovery was and is founded upon sundry such coupons of said city taken and separated from said

three clasecs [classes] of bonds aforesaid collectively; that is to say, upon a large number of such coupons, of thirty dollars each, for interest on and issued with bonds, issued by said city under authority of said act, in force November 6, 1849, in said writ mentioned, and upon a large number of such coupons of forty dollars each for interest on and issued with bonds issued by said city under authority of said act, approved January 26, 1853, in said writ mentioned, and upon a large number of such coupons of forty dollars each for interest on and issued with bonds issued by said city without authority as aforesaid, and validated and made a debt of said city by said act, approved January 31, 1857, and upon interest accrued upon said coupons, and the said recovery was and is founded upon such and no other causes of action. All of which is respectfully here certified and returned under the seal of the city of Quincy, this day of June, A. D. 1864.

[L. S.] THOMAS REDMOND,
Mayor of said City.

Witness the seal of said city.

P. W. LANE, *City Clerk.*

27 SCHEDULE A.

An act amendatory of the several acts relating to the city of Quincy, to provide for raising a revenue therein and regulating costs arising under the charter and ordinances of said city.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly,* That for the collection of the revenues of said city of Quincy, whether general or special, the said city shall compose but one collection district, and at each annual charter election in and for said city there shall be elected a collector of the revenue for said city, and all laws, ordinances, and duties appertaining to the collection of and accounting for city taxes shall apply to such collector, and he shall perform all the duties required or to be required by law and the charter and ordinances of said city relating to the collection of and accounting for the city taxes. He shall keep a public office, during the time of collecting such taxes, at the court-house in said city, or at such place as the city council of said city may designate. Said collector shall give such bond and security as said city council shall direct and require, to be approved by said city council and filed and recorded in the office of the city clerk of said city.

SEC. 2. That the said collector of the revenue, and all or any of the officers whose election is provided for by the seventh section of the act entitled "An act to confirm an act entitled an act to reduce the law incorporating the city of Quincy and the several acts amendatory thereof into
28 one act, and to amend the same, approved January 30, 1857, and to amend the same, and to legalize all acts of the said city under the provisions of said act or any other acts heretofore passed in respect to the rights or powers of said city," approved January 26, 1859, shall be subject to the control of the city council of said city, and in case of the death or disability of said collector or any of the aforesaid officers, the vacancy or vacancies or office shall be filled by appointment by said city council. The person so appointed to such office shall hold the same until the next general election for city purposes held in said city.

SEC. 3. The city of Quincy shall not be required to give security for costs in any prosecutions or suits arising under the charter or ordinances of said city.

SEC. 4. The city council of said city shall have power to levy and collect annually taxes on real and personal property within the limits of said city as follows: On real and personal property within, or which may hereafter be within, portions of said city lighted with gas, to meet the expenses thereof,

not exceeding twenty-eight cents on each one hundred dollars per annum on the annual assessed value thereof. On all real and personal property within the limits of said city, to meet the expenses of obtaining school grounds, and erecting, repairing, and improving school buildings and school
29 grounds, and providing teachers, and maintaining public schools in said city, and to be devoted exclusively for such purposes, not exceeding twenty-five cents on each one hundred dollars per annum on the annual assessed value thereof. *Provided*, That no more than eighteen cents on each one hundred dollars aforesaid shall be levied in any year for such purposes without the concurrence of a majority of the votes of legal voters of said city, to be cast at an election to be ordered by said city council and held to determine the rate per cent. so to be levied on real and personal property within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof.

SEC. 5. All laws and parts of laws, other than the provisions hereof, touching the levy or collection of taxes on property within said city, except those regulating such collection, and all laws conflicting herewith, are hereby repealed; but this act shall not affect taxes of said city relating to streets or alleys, or to licenses of whatever nature, nor any sources of revenue other than taxes upon real or personal property.

SEC. 6. This act shall be deemed a public act, and shall take effect and be in force from and after its passage.

S. A. BUCKMASTER,
30 *Speaker of the House of Representatives.*
FRANCIS A. HOFFMAN,
Speaker of the Senate.

Approved Feb'y 14, 1863.

RICH'D YATES, *Governor.*

UNITED STATES OF AMERICA, *State of Illinois, ss:*

I, O. M. Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the great seal of State, at the city of Springfield, this 12th day of September, A. D. 1863.

O. M. HATCH, *Secretary of State.*

Endorsed: Filed June 22, 1864.

P. P. ENOS, *Cl'k.*

31 And afterwards, to wit, on the twenty-second day of June, in the year last aforesaid, there was filed in the office of the clerk of said court the demurrer of relator to return of respondent, in words and figures following, to wit:

Circuit court of United States for the southern district of Illinois.

UNITED STATES, *ex rel.* LOUIS A. VON HOFFMAN,
vs.
THE CITY OF QUINCY. } Mandamus.

And now comes the plaintiff and demurs to the return of the def't to the alternative writ herein, and says the same is no sufficient answer to the matters of his said writ. Wherefore he prays that a peremptory writ issue herein, &c.

MERRICK & McKINNON,
Att'ys for Relators.

And the respondent, the said city of Quincy, for joinder in demurrer, says his said return is sufficient in law to bar the pl'ff his peremptory writ herein. Wherefore he prays judgment, &c.

SKINNER & MARSH, *his Att'ys.*

Endorsed : Filed June 22, 1864.

P. P. ENOS, *Cl'k.*

32 And afterwards, to wit, on the twenty-third day of June, in the year last aforesaid, the following proceedings were had in said court in said entitled cause, and entered of record, to wit :

UNITED STATES, *ex rel.* LOUIS A. VON HOFFMAN,
vs.
THE CITY OF QUINCY. } Petition for mandamus.

Now comes the relator, by Messrs. Merrick & McKinnon, his attorneys, and now comes also the respondents, by its attorneys, Messrs. Skinner & Marsh, and this cause being submitted upon the demurrer of relator to the return to the petition herein, and the court having heard the arguments of counsel, overrule said demurrer. The parties having stipulated that said petition should stand for an alternative writ, it is therefore considered and and adjudged by the court that the respondent recover of and from the said relator its costs by it about its defence in this behalf expended, amounting to the sum of fifteen dollars and five cents, and that execution issue therefor.

And afterwards, to wit, on the eighth day of August, in the year last aforesaid, the said relator, by his said attorneys, lodged in the clerk's office of the said court his writ of error, in words and figures following, to wit :

33 UNITED STATES OF AMERICA, *ss :*

The President of the United States of America to the judges of the circuit court of the United States for the eighth circuit and northern district of Illinois, greeting:

Because in the record and proceedings as also in the rendition of a judgment and dismissal of the petition exhibited in said court before you, by the United States of America, on the relation of Louis A. Von Hoffman, praying for a writ of mandamus against the city of Quincy, a manifest error hath happened, to the great damage of said Louis A. Von Hoffman, relator aforesaid, as by his said petition appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if a judgment be therein given, that then, and under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of
34 right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 8th day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

P. P. ENOS, *Clerk.*

Endorsed: Copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named city of Quincy, defendant in error.

MERRICK & McKINNON,
Att'ys for Pl'ffs in Error.

This writ of error is allowed.

S. H. TREAT.

Endorsed: Filed Aug. 8th, 1864.

P. P. ENOS, *Clerk.*

Whereupon a writ of citation was issued in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

To the city of Quincy, greeting:

You are hereby cited and admonished to be and appear at a Supreme
35 Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and southern district of Illinois, wherein the United States of America, on the relation of Louis A. Von Hoffman, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Treat, district judge of the United States for the southern district of Illinois, and ex officio one of the judges of the circuit court for said district, this 20th day of August, A. D. 1864.

S. H. TREAT, *District Judge.*

Service of this citation accepted this 22d day of August, A. D. 1864.

SKINNER & MARSH,
Attorneys for Respondents in Error.

Endorsed: Filed the 23d day of August, 1864.

P. P. ENOS, *Clk.*

36 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, Pascal P. Enos, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in a certain cause in said court, wherein the United States of America, on relation of Louis A. Von Hoffman, is plaintiff and the city of Quincy is defendant, in petition for mandamus, as the same appears of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at the city of Springfield, in said district, this 23d day of August, A. D. 1864.

[SEAL.] P. P. ENOS, *Clerk.*

Filed 29th October, 1864

REC. 168—3

UNITED STATES SUPREME COURT,

June Term, A. D. 1864.

THE UNITED STATES OF AMERICA,
ON THE RELATION OF
LOUIS A. VON HOFFMAN,
against
THE CITY COUNCIL OF THE CITY OF QUINCY, AND OTHERS.

Petition for Mandamus.

ARGUMENT FOR RELATOR,

BY JOHN J. MCKINNON.

Beach & Barnard, Printers, 14 Clark St., Chicago.

IN THE

United States Supreme Court,

December Term, A. D. 1864.

THE UNITED STATES OF AMERICA, ON THE RELATION OF LOUIS A. VON HOFFFMAN,

against

THE CITY COUNCIL OF THE CITY OF QUINCY,

AND OTHERS.

Petition for Mandamus.

Argument of John J. McKinnon,

FOR RELATOR.

CHICAGO:

BEACH & BARNARD, PRINTERS, NO. 14 SOUTH CLARK STREET

1864.

STATEMENT OF CASE.

Under the provisions of the several special acts of the legislature, set forth in the petition as exhibits 1, 2, 3, (Rec. pp. 9 to 18 inclusive) and the general law of the State of Illinois, in force, November 6th, A. D. 1849, entitled "*An act supplemental to an act entitled an 'Act to "provide for a general system of railroad incorporation,'*" the city of Quincy subscribed for and took a large amount of stock in the capital stock of the Northern Cross and Quincy and Toledo Railroad Companies of Illinois, and in payment therefor, issued its bonds with coupons or interest notes attached. The general law and several acts referred to are as follows:

"*An act supplemental to an act entitled an 'Act to provide "for a general system of railroad incorporation.'*"

"SEC. 1. *Be it enacted by the People of the State of Illi-* "*nois, represented in the General Assembly*, That whenev- "er the citizens of any city or county in this State are de- "sirous that said city or county should subscribe for stock "in any railroad company already organized or incorpora- "ted, or hereafter to be organized or incorporated under "any law of this State, such city or county may and are "hereby authorized to *purchase or subscribe* for shares of "the capital stock in any such company, in any sum not "exceeding one hundred thousand dollars for each of such "cities or counties; and the stock so subscribed for or pur- "chased, shall be under the control of the county court of "the county or common council of the city making such "*subscription or purchase, in all respects as stock owned* "*by individuals.*

"SEC. 2. That for the payment of said stock, the judges "of the county court of the county or the common council "of the city making such *subscription or purchase*, are "hereby authorized to *borrow money* at a rate not exceed- "ing ten per cent. per annum, and to *pledge the faith* of "the county or city for the annual payment of the interest, "and the ultimate redemption of the principal; or if the "said judges or common council should deem it most ad- "visable, they are hereby authorized to *pay* for such sub- "scription or purchase, in bonds of the city or county ma- "king such subscription to be drawn for that *purchase* in "sums not less than fifty dollars, bearing interest not ex- "ceeding ten per centum per annum: *Provided*, That no "bond shall be paid out at a rate less than par value.

"SEC. 3. The railroad companies already organized or "incorporated, or hereafter to be organized or incorpora- "ted under the laws of this State, are hereby authorized to "receive the bonds of any county or city becoming subscri- "bers to the capital stock of such company, at par, and in "lieu of cash, and to issue their bonds, bearing interest "not exceeding ten per cent. per annum for any moneys by "them borrowed for the construction of their railroad and "fixtures, or for the purchase of engines and cars, and for "such purpose may dispose of any bonds by them received "as aforesaid.

"SEC. 4. No subscription shall be made, or purchase or "bond issued, by any county or city under the provisions "of this act, whereby any debt shall be created by said "judges of the county court of any county, or by the "common council of any city, to pay any such subscrip- "tion, unless a majority of the qualified voters of such "county or city (taking as a standard the number of votes "thrown at the last general election previous to the vote

" had upon the question of subscription under this act for " county officers,) shall vote for the same; and the judges " of the county court of any county, or the common coun- " cil of any city, desiring to take stock as aforesaid, shall " give at least thirty days' notice, in the same manner as " notices are given for election of State or county officers " in said counties, requiring said electors of said counties " or said cities to vote upon the day named in such notices, " at their usual place of voting, for or against the subscrip- " tion for said capital stock which they propose to make, " and said notices shall specify the company in which stock " is proposed to be subscribed, the amount which it is pro- " posed to take, and the time which the bonds proposed to " be issued are to run, and the interest which said bonds " are to bear; or in case it is proposed to borrow money to " pay such subscription, then the notices shall state the terms " upon which such loan is to be affected; and the opinion " of the electors shall be expressed upon their ballots "for " subscription" or "against subscription," and counted and " returned by the judges and clerks of elections as in other " cases; and if a majority of the voters of said county or " city, assuming the standard aforesaid, shall be in favor of " the same, such authorized subscription or purchase, or " any part thereof, shall then be made by said judges or " common council. In case any election had under this " act, is held upon a day of general election for county offi- " cers the number of votes thrown at such general election " for county officers shall be the standard of the number of " qualified voters as aforesaid. No bonds shall be issued " under the provisions of this act by any county or city, ex- " cepting for the amounts required to be paid at the time " of subscription, and for the amounts of and at the time " when assessments upon all the stockholders of said com- " pany shall be regularly assessed and made payable.

"SEC. 5. This act shall take effect from and after its "passage.

[EXHIBIT 1.]

"SECTION 1. *Be it enacted by the people of the State of "Illinois, represented in the General Assembly*, That the "city of Quincy is hereby authorized to levy and collect a "special annual tax upon the property, real and personal, "situated in said city sufficient for the payment of the an- "nual interest, which may accrue upon any bonds to be "hereafter issued by said city for railroad purposes, under "the provisions of act entitled "An act supplemental to 'An "act entitled an act to provide for a general system of rail- "road incorporation,'" in force the 6th day of November, "A. D. 1849.

"SEC. 2. The special tax aforesaid shall be levied and "collected at the same time and in the same manner as the "other taxes levied by said city, and the said city shall have "the same rights, powers and remedies, to enforce the col- "lection of the same, by the sale of property or otherwise, "as is or may be provided for in other cases relating to the "city revenue.

"SEC. 3. Said tax when collected, shall by the said city, "be set apart and held separate and distinct from the other "portions of the city revenue, as a fund specially pledged "for the payment of the annual interest on the bonds afore- "said, and shall be by the said city, from time to time, ap- "plied to the payment of said interest, as the same be- "comes due and payable, and to no other purpose whatever. *Approved, February* 17, 1851.

[EXHIBIT 2.]

"SECTION 1. *Be it enacted by the people of the State of "Illinois, represented in the General Assembly*, That the

" city of Quincy is hereby authorized to subscribe for shares
" of stock in the Northern Cross Railroad Company, in any
" sum not exceeding one hundred thousand dollars, in addi-
" tion to the subscription made by the city to the stock of
" said company, under the provisions of an act entitled "An
" act supplemental to an act entitled 'an act to provide for a
" general system of railroad incorporations,'" approved
" November sixth, eighteen hundred and forty-nine; and
" which stock so subscribed for shall be under the control of
" the common council of said city, in all respects, as stock
" subscribed by individuals.

" SEC. 2. That for the payment of the stock so subscribed
" the common council of the city is hereby authorized to is-
" sue to said company the bonds of said city at par, bearing
" interest not exceeding eight per cent. per annum, payable
" semi-annually, with interest coupons annexed, and execu-
" ted by the mayor of the city, under the seal thereof, and
" countersigned by the city clerk, to an amount equal to the
" par value of the shares of stock subscribed, and to pledge
" the faith of the city for the semi-annual payment of the
" interest and the ultimate redemption of the principal.

" SEC. 3. That before the additional stock aforesaid shall
" be subscribed, an election shall be held to ascertain whether
" the citizens of said city are desirous that such subscription
" be made; and which said election shall be called by the
" common council of the city, and held and conducted and
" returns thereof made in the manner required by the fourth
" section of the act mentioned in the first section of this act.
" In case a majority of the voters voting at said election
" shall be in favor of the subscription, such authorized sub-
" scription shall then be made by the common council of
" said city. The bonds which shall be issued under the pro-
" visions of this act shall be issued for the amount of, and at
" the time the assessments upon the other stockholders of

" said company shall be regularly assessed and made pay-
" able: *Provided*, That the common council of the city may
" at any time issue to the said company the full amount of
" the bonds to be issued in payment of such subscription
" whenever in their discretion they may deem it advisable.
" SEC. 4. That the city council of said city is hereby au-
" thorized to levy and collect a special annual tax on all real
" and personal property situated in said city, for the pay-
" ment of the interest on said bonds, in the same manner as
" is provided by an act entitled " An act to authorize the
" city of Quincy to collect a special tax for the purposes
" therein named," approved February the seventeeth, eigh-
" teen hundred and fifty-one; and the provisions of the
" act aforesaid in relation to the levy, collection and appro-
" priation of the tax therein mentioned shall in every re-
" spect apply to the tax to be levied by virtue of this act.
" This act to take effect and be in force from and after its
" passage.
" APPROVED, *January* 26, 1853."

[EXHIBIT 3.]

" *AN ACT to incorporate the Quincy and Toledo Rail-*
" *road Company; to legalize the subscription of the city*
" *of Quincy and the county of Brown to the capital stock*
" *of the Northern Cross Railroad Company, and the*
" *bonds issued or to be issued by said city and county*
" *in payment for said stocks; to amend the charter of*
" *the Great Western Railway Company of the State of*
" *Illinois, and legalize and confirm the contract of said*
" *Company with James W. Singleton.*
" SECTION 1. *Be it enacted by the People of the State*
" *of Illinois, represented in the General Assembly*, That
" James W. Singleton, his associates, successors and as-
" signs, are hereby created a body corporate and politic, un-

" der and by the name and style of "The Quincy and Toledo
" Railroad Company," with perpetual succession; and by
" that name shall be and are hereby made capable in law
" and equity to sue and be sued, to plead and be impead-
" ed, defend and be defended, in all courts of law and
" equity in this State and elsewhere. To make, have,
" and use a common seal, and the same to renew and alter
" at pleasure, and shall be and are hereby vested with all
" the powers, privileges and immunities which are or may
" be necessary to carry into effect the purposes and objects
" of this act; and the said corporation hereby created is
" authorized and empowered to locate and construct, and
" finally complete and put in operation, a railroad from
" the east end of the depot ground of the Northern Cross
" Railroad Company at Camp Point in the County of Ad-
" ams, to the east side of the Illinois river, at or near Na-
" ples or Meredosia, and so to connect the same with the
" track of the Great Western Railroad of Illinois: *Provi-*
" *ded*, That the construction of the contemplated bridge,
" shall not obstruct the navigation of the Illinois river.

" Sec. 2. And for the purpose of constructing, main-
" taining, equipping and operating said railroad, the corpo-
" ration hereby created shall have, and may use, exercise,
" and enjoy, all the rights, powers, privileges, franchises
" and immunities, which, by the several acts of the legis-
" lature of Illinois, are conferred on the Northern Cross
" Railroad Company, together with the power to mortgage,
" lease, or sell said road to any other company or corpo-
" ration.

" Sec. 3. The Great Western Railroad Company of the
" State of Illinois, be and they are hereby authorized and
" empowered by the president to indorse the bonds of the
" corporation hereby created, and to guarantee and secure
" the payment of the principal and interest of said bonds,

" and at the place of payment thereof, as the same may be-
" come due and payable. The words "Guaranteed by the
" Great Western Railroad Company of the State of Illi-
" nois," written or printed upon the said bond or bonds,
" and signed by the president of said company, shall be
" and is hereby declared to be a covenant of said Great
" Western Railroad Company to and with the holder, or
" holders of said bond or bonds, to pay such holder or hold-
" ers the principal and interest thereof, as the same may
" become due and payable, and the contract between the
" said Great Western Railroad Company, and James W.
" Singleton, dated the twelfth day of September, 1864, is
" hereby declared to be valid and binding upon the par-
" ties thereto in all courts of law and equity in this State
" and elsewhere, as to their respective undertaking therein,
" the power and authority to execute the same, being here-
" by granted to the parties respectively.

" SEC. 4. That the act of John Wood, mayor of the city
" of Quincy, dated the (6th) sixth day of August, 1856,
" whereby the said John Wood on behalf of the said city,
" subscribed in the capital stock of the Northern Cross Rail-
" road, pursuant to an ordinance of the city council of
" said city, dated the fourth day of August, 1856, authori-
" zing, empowering and directing the said John Wood, May-
" or as aforesaid to subscribe two hundred thousand dollars
" to the capital stock of said Northern Cross Railroad
" Company together with the acts, doings, and agreements
" of the city council of the said city of Quincy, and the
" same are hereby legalized, ratified and confirmed, and
" all bonds of the said city of Quincy, issued or to be
" issued, in payment of said subscription of two hundred
" thousand dollars, shall in all respects be and are hereby
" made a debt of said city of Quincy due to the holder, or
" holders, of such bonds contracted by said city of Quin-

" cy under authority of law. *Provided* that said bonds " shall be, and remain in the hands of Isaac O. Woodruff, " of said city of Quincy, until said road is graded from " Camp Point in the county of Adams, to Mount Sterl- " ing, Brown county. Therefore, the said Isaac O. Wood- " ruff shall deliver one hundred thousand dollars of said " bonds, and retain the remainder thereof in his hands " until said road is graded to the Illinois river, provided " nothing in this act shall be so construed as to prevent the " city council of said city from authorizing an earlier de- " livery of said bonds, if in their judgment the interest of " the city requires it, and the said city council are hereby " authorized and empowered to levy and collect a special " tax for the payment of the interest of said bonds.

" SEC. 5. The subscription of Jacob Vandeventer, coun- " ty judge of the county of Brown, and for and on be- " half of said county of one hundred thousand dollars to " the capital stock of the Northern Cross Railroad Com- " pany, be and the act of said county judge is hereby le- " galized, ratified and confirmed, and the said county " judge of the county of Brown, is hereby authorized, em- " powered and directed to make, execute and deliver to " the person, or persons, company, or corporation enti- " tled to receive the same one hundred bonds of the coun- " ty of Brown, for one thousand dollars each, bearing a ra- " tio of interest not greater than eight per cent. per annum, " the said interest payable semi-annually in the city of " New York, at the Metropolitan Bank, on the first day of " January and July of each year, and the principal of said " bonds, payable in ten years at the same place in the city " of New York, upon receiving an equal amount of the " stock of the Great Western Railroad Company of the " State of Illinois, and the said bonds so to be issued as

"aforesaid shall to all intents and purposes, be and re-
"main until the interest and principal thereof is fully paid,
"a debt of the said county of Brown, due to the holder
"or holders of said Bonds, contracted by the said county
"of Brown under the authority of law.

"SEC. 6. And it shall be lawful for said city or said
"county to make their bonds payable at any banking
"house in the city of New York or Boston, which may
"be agreed upon by the parties interested.

"SEC. 7. This act to be in force from and after its pas-
"sage.

APPROVED, *January* 31, 1857.

The relator, Louis Von Hoffman, of New York, became the owner of a part of the coupons or interest notes attached to the bonds so issued, and being unable to procure payment or induce the Common Council of Quincy to levy and collect a special tax for the payment thereof, in accordance with the provisions of the acts under and upon the *faith* of which the same were issued and negotiated, the relator commenced a suit thereon to the June term, A. D. 1863, of the Circuit Court of the United States, for the Southern District of Illinois, and on the tenth day of June, in the same year, recovered judgment for the sum of $22,206,69, damages and costs.

On the 15th of July, 1863, this judgment still remaining unpaid, the relator caused execution to be issued thereon, and placed in the hands of the marshal of the district to execute, and on the 16th of July, 1863, the marshal, having previously demanded payment thereof from the proper officers of the city, which was refused, returned, *nulla bonna.*

Thus situated, the relator, after giving due notice to the

city of Quincy, filed his petition in the office of the clerk of this court for said district, setting forth these facts, and making the several acts of the legislature, to which reference has been made, exhibits thereto, and praying that a writ of mandamus might issue therefrom, directed to the proper officers of the city of Quincy, commanding them to levy and collect a special tax, in accordance with the provisions of the acts of the legislature under which the coupons therein mentioned were issued and negotiated, sufficient to pay his judgment and costs.

To this petition, the city of Quincy, by its proper officers, waiving the necessity of an alternative mandamus—made return, admitting the facts set forth in the petition, but for other reasons denying the relator's right to the writ prayed for.

The principal defence relied on in this return, is an act of the legislature of the State of Illinois, approved February 14, 1863, entitled "an act *amendatory* of the several acts "relating to the city of Quincy, to provide for raising a "revenue therein, and regulating costs arising under the "charter and ordinances of said city."

The act is set out in the return (Rec, pp. 27 to 30 inclusive) and reads as follows:

"*AN ACT amendatory of the several acts relating to the "city of Quincy, to provide for raising a revenue therein "and regulating costs and charges arising under the "charter and ordinances of said city.*

"SECTION 1. Be it enacted by the people of the State "of Illinois, represented in this General Assembly, that "for the collection of the revenues of said city of Quincy, "whether general or special, the said city shall compose "but one collection district, and at each annual charter

" election in and for said city, there shall be elected a col-
" lector of the revenue for said city, and all laws, ordinan-
" ces and duties appertaining to the collection of and ac-
" counting for city taxes, shall apply to such collector;
" and he shall perform all the duties required, or to be re-
" quired, by law and the charter and ordinances of said
" city, relating to the collection of and accounting for the
" city taxes; he shall keep a public office during the time
" of collecting such taxes, at the court house in said city,
" or at such place as the city council of said city may des-
" ignate; said collector shall give such bonds and security
" as said city council shall direct, and required to be ap-
" proved by said city council, and filed and recorded in
" the office of the city clerk of said city.

" SEC. 2. That the said collector of the revenue, and
" all or any of the officers whose election is provided for
" by the seventh section of the act entitled "an act to con-
" firm an act entitled an act to reduce the law incorpora-
" ting the city of Quincy, and the several acts amendatory
" thereof, into one act, and to amend the same, approved
" January 30, 1857, and to amend the same, and to legal-
" ize all acts of the said city under the provisions of said
" act, or any other acts heretofore passed in respect to the
" rights or powers of said city," approved January 26,
" 1859, shall be subject to the control of the city council
" of said city, and in case of the death or disability of said
" collector, or any of the afosesaid officers, the vacancy
" or vacancies or office shall be filled by appointment by
" said city council; the person so appointed to such office
" shall hold the same until the next general election for
" city purposes held in said city.

" SEC. 3. The city of Quincy shall not be required to
" give security for costs in any prosecutions or suits aris-
" ing under the charter or ordinances of said city.

"SEC. 4 The city council of said city shall have power "to levy and collect, annually, taxes on real or personal "property within the limits of said city as follows: On "real and personal property within, or which may hereaf- "ter be within, portions of said city lighted with gas, to "meet the expenses thereof, not exceeding twenty-eight- "cents on each one hundred dollars per annum as the an- "nual value thereof.

"On all real and personal property within the limits of "said city, to meet the expenses of obtaining school grounds, "and erecting, repairing and improving school buildings "and school grounds, and providing teachers, and main- "taining public schools in said city, and to be devoted ex- "clusively for such purposes, not exceeding twenty-five "cents on each one hundred dollars per annum on the an- "nual assessed value thereof. *Provided*, that no more than "eighteen cents on each one hundred dollars aforesaid, "shall be levied in any year for such purposes without the "concurrence of a majority of the votes of legal voters of "said city, to be cast at an election to be ordered by said "city council, and held to determine the rate per cent. so "to be levied, on all real and personal property within the "limits of said city, not exceeding fifty cents on each hun- "dred dollars per annum on the annual assessed value "thereof.

"SEC. 5. All laws, and parts of laws, other than the "provisions thereof touching the levy or collection of tax- "es on property within said city, except those regula- "ting such collection, and all laws conflicting herewith, are "hereby repealed; but this act shall not affect taxes of said "city relating to streets or alleys, or to license of whatever "nature, nor any sources of revenue other than taxes upon "real or personal property.

"SEC. 6. This act shall be deemed a public act, and "shall take effect and be in force from and after its pas- "sage.

"APPROVED, *February* 14, 1863.

This *master piece* of legislation, it will be observed, is a repeal of all laws, and parts of laws, under which the coupons, referred to, were issued ; and attempts, in effect, to prohibit the city of Quincy from levying and collecting an annual tax upon the property, real and personal, within its limits, as provided in the acts mentioned, sufficient for the payment of the interest on its bonds.

N. B. After setting forth this *chef. d'oeuvre* of repudiation, the return (Rec. pp. 21 to 24 inclusive) states that, in pursuance thereof, the city council of Quincy, on the 16th day of April, A. D. 1864, to pay *the current expenses of said city*, duly levied for said year, a tax of fifty cents on each one hundred dollars of the assessed value of all the real and personal property within its limits—which levy is to the full extent and amount authorized by said act—"*and* "*has levied for said year no other taxes* than as provided "for in and by said act of the general assembly aforesaid. "Approved, Feb. 14, 1864.

"*And that said fifty cents on the one hundred dollars* "*when collected, this respondent certifies will not be suffi-* "*cient to pay the current expenses of said city, for said* "*year* 1864, *and the debts of the said city.*"

To this return, a demurrer was interposed on the ground that, the several acts of the legislature, under which the coupons referred to were issued, constitute, with the holders thereof, a *contract, or contracts*, within the meaning of the provision of the constitution of the United States, which prohibits the States from making any law impairing the obligation of contracts, and, therefore, cannot be repealed, by

any subsequent acts of the legislature, to the prejudice and without the consent of parties having pecuniary rights dependant on their existence.

Upon this state of facts the case was brought on to a hearing in the court below, and after argument of counsel, submitted to the court, who, thereupon, made the following order, (Rec. p. 32):

"It is thereupon considered and adjudged by the court, "that the respondent recover of, and from, the said relator, "its costs by it, about its defence in this behalf expended, "amounting to the sum of fifteen dollars and five cents, "and that execution issue therefor."

It does not appear from the record, upon what grounds, or by what process of reasoning, the court arrived at this judgment; but it may be stated *aliunde* that the court formed its decision on two propositions.

1st. That the respondent being a municipal corporation, the creature of a sovereign State, through an act of its legislature or law making power, is entirely subject to legislative control, and may be destroyed or enlarged at legislative will.

2nd. That the authority of a municipal corporation to levy and collect taxes, being a power derived from the State, is an exercise of sovereignty over which the legislature has supreme control; and, as the legislature may not only destroy the corporation entirely, by repeal of its charter, but at any time, as in the principal case, abridge its powers, regardless of the pecuniary rights of individuals, *therefore*, the courts are powerless to enforce a duty which they otherwise would.

From this decision the relator sued out a writ of error to this court, where the case now comes up on the facts stated and errors assigned.

BRIEF AND ARGUMENT.

The general question is, does the act of February 14, 1863, so far *annul* the general law of November 6, 1849, and the several supplemental acts of the legislature, as to prevent the operation and enforcement thereof, by the courts, to compel payment of the relators judgment.

This is really the only question in the case. Upon its answer depends not only the right of the relator to the relief he seeks, but the value or worthlessness of like securities, amounting to many millions of dollars. For it is an historical fact, not to be lost sight of, that an immense number of these railroad bonds and coupons—as they are termed—have been issued by many of the cities, counties and towns of our entire country, under similar powers, and upon the *faith* of which, capitalists, in this country and Europe, have freely invested and advanced their money, to build, and equip the long lines of railway everywhere to be met with throughout this broad land, and which have added so much to the wealth, grandeur, industry, civilization and convenience of a great, busy and once happy people.

Regarded, therefore, merely as a commercial or financial question, it is of the *very* highest importance—a question in which not only the relator but the public at large have a deep interest. Hence, it ought to be well and fully considered.

In discussing this truly great question, we maintain that the general law of November 6, 1849, and the several supplemental acts of the legislature, under, and in pursuance whereof, were issued the coupons, or interest notes, in

the particular case, constitute contracts within the meaning of that provision of the constitution of the United States, which declares that "*no State shall pass any law impairing the obligation of contracts*," and, therefore, that the act of February 14th, 1863, in attempting to repeal the same, is in direct violation of this constitutional provision, and a nullity as regards the rights of the relator, and all others having pecuniary interests depending on the existence thereof; and, hence, as to such rights and pecuniary interests, leaves in full force the several laws under which the coupons were issued.

If this position, which would seem to be correct upon principle, can be supported by authority, then it follows as a necessary deduction, that not only the general law and the several supplemental acts are in force as regards the rights and pecuniary interests of the relator, and others possessed of such securities, and for the payment of which the levy and collection of a special tax under the law, is an absolute necessity, but on the plainest principles of *ethics*, as well as law, it was the *duty* of the city of Quincy to levy and collect the tax thereby authorized, and upon its failure and refusal so to do, the court below ought to have enforced the duty by *mandamus*.

Surely, it would not have been contended, on behalf of the respondent, before procuring the passage of this attempted act of *repudiation*, that it was not its *duty* to have levied and collected a special tax, as provided and directed by the laws, under which the coupons were issued and negotiated, sufficient to pay the relator's judgment; and would not the court upon application, showing its failure and refusal, have compelled by mandamus the performance of so plain a duty?

That such is the doctrine of this court needs only a reference to the case of the *Board of Commissioners of Knox*

County vs. *Aspinwall and others*, 24th *Howard*, 3, p, 6,— which is so much in point and peculiarly applicable to the case under consideration, that we beg leave to especially call the attention of the court thereto.

The board of commissioners of the county of Knox, in the State of Indiana, pursuant to an act of the Indiana legislature incorporating the Ohio and Mississippi Railroad Company, subscribed for and took stock in said company, and in payment of the stock so taken, issued its bonds with interest coupons attached. The third section of the act under which the bonds were issued, provided that the interest thereon should be paid annually, on the first day of May, at such time and place as the directors of the company might determine, and to provide for payment of the same, directed the county commissioners, "at the levying of the "county taxes for each year, to assess a special tax suffi- "cient to realize the amount of interest to be paid for the "year."

The board of commissioners refused to perform this plain duty; and in avoidance thereof, set up a variety of excuses.

Aspinwall, and the other parties interested with him, being of the opinion that the objections made by the commissioners were not well taken, brought suit in the Circuit Court of the United States for the district of Indiana, against the board of commissioners of Knox county, and obtained judgment for the amount of the coupons and interest after maturity.

The case was afterwards brought into the Supreme Court by writ of error, and there affirmed.

The opinion of the court, delivered by Mr. Justice NELSON, in that case, is an exemplification of simple, even-handed justice, highly characteristic of the court and judge, and well worthy the perusal of every lawyer.

The judgment being thus affirmed by the highest tribunal in the land, Aspinwall caused execution to be issued thereon, and delivered to the marshal of the district of Indiana to execute, and make the money. Under this execution a levy was actually made, and subsequently abandoned; and to enforce payment, the plaintiffs afterwards moved the court for a mandamus to the commissioners, to compel them to levy a tax to satisfy the judgment.

The board of commissioners entered an appearance, and resisted the motion on several grounds, but chiefly that the court had no jurisdiction to issue a mandamus in the case. The court, however, was of a different opinion, and awarded the writ. Whereupon, the commissioners again brought the matter before this court, by writ of error, and as appears from the report of the case, the learned counsel, who represented the board of commissioners, thus states his objection, and wherein he considered the Circuit Court for the district of Indiana, had exceeded its jurisdiction:

"If the Circuit Court of the United States has power to "issue a writ of mandamus to enforce the payment of a "judgment at law, it derives that power from the provis- "ions of the 14th section of the judiciary act of 1789.

"It is not pretended that there is any other foundation "for it.

"The words of the section are: 'That all the before "'mentioned courts of the United States shall have power "'to issue writs of *scire facias*, *habeas corpus*, and all "'other writs not specially provided for by statute, which "'may be necessary for the exercise of their respective "'jurisdictions, and agreeable to the principles and usages "'of law.'

"I maintain that the 'exercise of jurisdiction,' in any "sense in which the writ of mandamus could be called in "aid of it, was complete in this case, upon the rendition of

"final judgment; that, to enforce the payment of that "judgment by means of this extraordinary writ, would "not be 'agreeable to the principles and usages of law.' "Passing over the fact, which appears in the record, that "an execution was issued, and a levy actually made, which "the party voluntarily abandoned, to resort to his writ of "mandamus; and, conceding, for the sake of argument, "what the opposing counsel assumes in his brief, that 'no "execution can be levied on the general property and ef-"fects of the county,' I affirm that this state of facts simp-"ly presents the ordinary case of a party holding a debt of "record which cannot be realized by process of execution. "And I deny that a writ of mandamus in such a case is, "in any just sense, 'necessary for the exercise of jurisdic-"'tion,' or 'agreeable to the principles and usages of law.'

"The writ of mandamus is the appropriate remedy to "enforce the performance of some duty enjoined by law, "where there is no other adequate remedy.

"The duty imposed by law on the board of commission-"ers of the county of Knox, now sought to be enforced, "was a duty to levy a tax for the payment of interest cou-"pons, not judgments of a court of law.

"The holders of these coupons had a right to go into "the State court, and enforce the levying of the tax for "their payment, by mandamus; but they selected a differ-"ent remedy.

"They chose to sue in the ordinary form, in the circuit "court, merged their coupons in a judgment at law, and "must rely for the collection of that judgment, on the or-"dinary and usual writs in use for that purpose.

"If, upon the failure of these, they may resort to the "writ of mandamus to compel the payment of their judg-"ment on the ground that such a writ is necessary to the "exercise of jurisdiction, why may it not be used in every

" case, to compel the payment of judgments which cannot " be collected in the usual way? The words of the stat- " ute, then, instead of being understood as words restrain- " ing the power to issue the writ in aid and furtherance of " ordinary remedies only, will become a grant to the cir- " cuit courts of the power to employ a new and formida- " ble process in all cases where the common writs of exe- " cution fail."

The opinion of the court was delivered by Mr. Justice GRIER, who after stating the fact and referring to the former report of the case, as found in 21 How., 542, disposes of the questions raised on behalf of the plaintiff in error, as follows:

" It appears that by the 3d section of this act it is made " the duty of the commissioners, for the purpose of paying " the interest due on the bonds, 'at the levying of the " ' county taxes for each year, to assess a special tax, suf- " ' ficient to realize the amount of the interest to be paid " ' for the year.'

" This the commissioners had not done, and refused to do " so, on notice and request of the defendants in error.

" Now, it is not alleged nor pretended but that, if this " judgment had been obtained against the corporation in " a State court, the remedy now sought could have been ob- " tained; for it must be admitted that, according to the " well established principles and usages of the common " law, the writ of mandamus is a remedy to compel any " person, corporation, public functionary, or tribunal, to " perform some duty required by law, where the party " seeking relief has no other legal remedy, and the duty " sought to be enforced is clear and indisputable. *That* " *this case comes completely within the category is too clear* " *for argument*; for, even assuming that a general law of " Indiana permits the public property of the country to be

" levied on, and so, for the ordinary indebtedness of the " country, it is clear that the bonds and coupons issued un- " der the special provisions of this act, were not left to this " uncertain and insufficient remedy. *The act provides a* " *special fund for the payment of these obligations, on the* " *faith and credit of which they were negotiated.* It is es- " pecially incorporated into the contract, that this corpora- " tion shall assess a tax for the special purpose of paying " the interest on these coupons. *If the commissioners ei* " *ther neglect or refuse to perform this plain duty, imposed* " *on them by law, the only remedy which the injured party* " *can have for such refusal or neglect is the writ of manda-* " *mus.*

" Why should not the Circuit Court of the United States " be competent to give to suitors this only adequate reme- " dy?

" By the common law, the writ of madamus is granted " by the King's Bench, in virtue of its perogative and su- " pervisory power over inferior courts. The courts of the " United States cannot issue this writ by virtue of any " supervisory power, at common law, over inferior State " tribunals. They can derive it only from the constitution " and laws of the United States.

" The jurisdiction of these courts is, by the constitution, " extended to 'controversies between citizens of different " 'States.' Congress has authority to make all laws which " shall be necessary and proper for carrying this jurisdic- " tion into effect. The jurisdiction of the court to give " the judgment in this case is not disputed; nor can it be " denied, that, by the constitution, Congress has the power " to make laws necessary for carrying into execution all its " judgments. (See *Wayman* v. *Southard*, 10 Wheaton, " 22,) Has it done so?

" By the 14th section of the judiciary act of 1789, it is

" enacted 'that courts of the United States shall have " 'power to issue writs of *scire facias, habeas corpus, and* " '*all other writs* not specially provided for by statute, " 'which may be necessary for the exercise of their re- " 'spective jurisdictions, and agreeable to the principles of " 'the common law.'

" Now, the 'jurisdiction' is not disputed, and it is '*nec-* " '*essary*' to an efficient exercise of this jurisdiction that " the court have authority to compel the exercise of a min- " isterial duty by the corporation, which by law they are " bound to perform, and by the performance of which " alone the plaintiff's remedy can be effected. *The fund* " *to pay this judgment, by the force of the contract, is a* " *special tax laid and to be collected by defendants. They* " *refuse to perform a plain duty. There is no other writ* " *which can afford the party a remedy, which the court is* " *bound to afford, if within its constitutional powers, except* " *that afforded by this writ of mandamus.*

" It is 'agreeable to the principles of the common law,' " and, consequently, within the category as defined by the " statute.

" A court of equity is sometimes resorted to as ancillary " to a court of law in obtaining satisfaction of its judg- " ments. But no court, having proper jurisdiction and " process to compel the satisfaction of its own judgments, " can be justified in turning its suitors over to another tri- " bunal to obtain justice. It is no objection, therefore, to " the use of this remedy, that the party might possibly " obtain another by commencing a new litigation in an- " other tribunal.

" We are of opinion, therefore, that the circuit court " had authority to issue the writ of mandamus in this case.

" It is no reason for setting it aside, that a previous al- " ternative writ had not issued. The notices served on the

" commissioners gave them every opportunity of defence " that could have been obtained by an alternative manda- " mus. There was no dispute about facts which could affect " the decision. The court gave them an opportunity to " comply with the demand of the plaintiffs; their excuse " for not doing so was, palpably, '*a mere colorable ad-* " '*journment or procrastination of the performance of the* " '*act, for the purpose of delay.*' *It is equivalent to a re-* " *fusal. Having refused to perform the duty which the* " *law imposed upon them on the proper day, without even* " *the pretense of a reason for such conduct, the peremptory* " *mandamus was very properly awarded, commanding the* " *duty to be performed* ' FORTHWITH.'

" The judgment of the circuit court is, therefore, af- " firmed with costs."

Here, the learned judge, with great cogency of reasoning, has disposed of, in a few plain remarks, every question, which, in the absence of the act of February 14, 1863, it would be possible to raise in the principle case.

He says, the act of the legislature of Indiana incorporating the Ohio and Mississippi Railroad Company, and in pursuance whereof the county of Knox subscribed for stock therein, and issued its bonds to *pay* the same, is a *contract;* and that, *having availed itself of the privileges granted by the act*, it was the duty of the board of commissioners, in accordance with the provisions thereof, to levy and collect the special tax therein and thereby directed. And as the commissioners had failed and refused to perform this plain duty, which the law imposed upon them, the court had authority, *notwithstanding* the coupons had been merged in a judgment at law, to award the peremptory mandamus, commanding the duty to be performed *forthwith.*

The same rule is laid down in the following cases:

Maddox v. *Graham & Knox*, Met. (Ky.) 57, and cases cited;
Commonwealth v. *Coms. of Alleghany*, 40 Penn., (4 Wright) 249;
Cope v. *City of Charleston*, 10 Rich., (S. C.) 491;
De Witt v. *City of San Francisco*, 2 Cal., 32 Barb., (N. Y.) 358.

But the question still remains to be considered: Does the act of February 14, 1863, so far *annul* the general law and several supplemental acts of the legislature, as to prevent the operation and enforcement thereof by the courts, so as to compel payment of the judgment, which the relator obtained against the respondent on the coupons, or interest notes, issued thereunder? This, we have seen, is the real issue in the case. The respondent holding the affirmative and the relator the negative of the question, which may be resolved in two propositions:

1st. The levy and collection of a tax, in pursuance of the laws, under which were issued the coupons, or interest notes, whereon the relator obtained judgment, is an exercise of a *special grant or franchise* conferred on the respondent for its private emolument and advantage; and, therefore, clearly distinguishable from the levy and collection of a tax in *its* character as a municipal or public body.

2d. The general law of November 6th, 1849, and the several supplemental acts of the legislature, under which were issued the coupons, or interest notes, whereon the relator obtained judgment, constitute a contract, or contracts, within the meaning of that clause of the constitution of the

United States, which declares that "*no State shall pass any "law impairing the obligation of contracts;*" and, therefore, can not be repealed.

These propositions have been so often affirmed by the highest tribunals of this country and England, and so perfectly settled and well understood, that they would seem to admit of no doubt; but being controverted in this particular case, we invoke the patience, as well as the attention, of the court to their discussion.

They will be considered in their order:

I.

THE LEVY AND COLLECTION OF A TAX, IN PURSUANCE OF THE SEVERAL LAWS UNDER WHICH WERE ISSUED THE COUPONS, OR INTEREST NOTES, WHEREON THE RELATOR OBTAINED JUDGMENT, IS AN EXERCISE OF A SPECIAL GRANT, OR FRANCHISE, CONFERRED ON THE RESPONDENT FOR ITS PRIVATE EMOLUMENT AND ADVANTAGE; AND, THEREFORE, CLEARLY DISTINGUISHABLE FROM THE LEVY AND COLLECTION OF A TAX IN ITS CHARACTER AS A MUNICIPAL OR PUBLIC BODY.

A reference to these powers will at once show that they are privileges conferred on the respondent as a private company, and not as a municipal or public body.

The general law of November 6, 1849 (sec. 1), after authorizing the respondent, and other municipal corporations, to *purchase or subscribe for stock* in any railroad company then or thereafter organized in the State of Illinois, provides that "*the stock so subscribed for, or purchased,*" shall be under the control of the county court of the county,

or the common council of the city, making such *subscription or purchase*, in all respects, *as stock owned by individuals.*

Section 2, of the same act, further provides: "That for "the *payment* of said *stock* the judges of the county "court of the county, or the common council of the city "making such *subscription or purchase*, are hereby author- "ized to *borrow money*, at a rate not exceeding ten per "cent. per annum, *and pledge the faith* of the county or "city for the annual payment of the *interest*, and ultimate "redemption of the *principal.* Or, if the said judges, or "common council, should deem it most advisable, *they* "are hereby *authorized to pay* for such *subscription or* "*purchase* in bonds of the city or county, making such "subscription, *to be drawn for that purchase*, in sums not "less than fifty dollars, bearing interest not exceeding ten "per cent. per annum."

And the supplemental act of February 17, 1851, which was passed before any of the bonds, or coupons, were issued, it will be observed, not only authorized the levy and collection of a special tax upon all the property, real and personal, within the corporate limits of the respondent, sufficient for the payment of the annual interest to accrue upon any bonds to be thereafter issued by it, for railroad purposes, under the general law of November 6, 1849, but actually *created* the respondent *a trustee* for that purpose, with power to enforce collection, and, when collected, to hold the same separate and distinct from other portions of its revenue, as a fund specially pledged and to be applied by it in payment of the interest on the bonds so issued, "*and to no other purpose whatever.*" And it is also worthy of note, that the other supplemental acts contain like provisions, or refer to and make this act a part thereof.

Now, then, are the powers conferred by this general law, and those supplemental acts, such as belong to the respondent in its character as a *municipal or public body?* Most assuredly and clearly not! But, on the contrary, is it not incontrovertibly true, that, under the laws, the purchase of, or subscribing for, railroad stock, and paying therefor, whether in money or by the issue of bonds, and the levy and collection of a special tax, is an exercise of power thereby conferred on the respondent for its private benefit and advantage, and not for municipal purposes, and, therefore, is not the respondent to be regarded, *quoad hoc*, as a private company?

That this is the true construction of these powers, as well as the *object and purpose* of the legislature in granting them, would seem to admit of no argument; but the respondent, as we understand, insists that this is not a correct view of the *nature and character* of the authority conferred on it by these powers, because it is thereby specially authorized and privileged as a means of paying the interest and principal of the bonds and coupons issued by it under the provisions thereof, to levy and collect a special annual tax, *which*, it contends, is necessarily an attribute of sovereignty, belonging to it in its character as a municipal or public body, and, therefore, entirely under the control and power of the legislature.

To show that this *pretension* of the respondent can not be maintained upon any principle of correct reasoning, and that it has no foundation whatever in authority, needs only to inquire for what *object and purpose* did the legislature grant these special privileges to the respondent; or, to use the words of a great judge in discussing the identical question, "To this end, *regard should be had, not so much* " *to the nature and character of the various powers confer-*

" *red, as to the object and purpose of the legislature in con-*
" *ferring them.*"

What, then, was the *object and purpose* of the legislature in granting these special powers and privileges to the respondent? Surely, it will not be contended, with any degree of seriousness, that they were conferred *exclusively* for public purposes, or that the State, in its sovereign character, has any interest in the investment under the law, or in the dividends or profits to be derived therefrom. On the contrary, is not the fact that the entire stock purchased under these powers, and the profits that have accrued and will accrue therefrom, belongs to, and forms part and parcel of, the private property of the respondent, in and over which the State has no power or control, more than it has over the lands and houses belonging to, and situated within, the corporate limits of respondent?

Thus tested, is it not obvious that the only purpose which the legislature had, or could have, with regard to the respondent, in granting these special powers and privileges, was to enable it, as a *private company*, to buy or speculate in railroad stocks, and pay for the same either in money or by the issue of bonds, and the levy and collection of a special tax, and trust for remuneration to the fortunate result of the investment?

In *Bailey* v. *The Mayor, &c., of the City of New York*, which was a case wherein this identical question of the sovereign character of the powers of a municipal corporation was raised, and after being fully and ably discussed, NELSON, Ch. J., in delivering the opinion of the court, lays down what we contend is the true rule in construing the powers conferred on the respondent in this case:

" The powers conferred by the several acts of the legis-
" lature authorizing the execution of this great work *are*
" *not*, strictly and legally speaking, *conferred for the benefit*

" *of the public.* The grant is a *special, private franchise,* " made as well for the private emolument and advantage " of the city, as for the public good. The State, in its " sovereign character, has no interest in it. It owns no " part of the work. *The whole investment* under the law, " and *the revenue and profits to be derived therefrom,* are a " part of the private property of the city; as much so as " the lands and houses belonging to it, situate within its " corporate limits.

" The argument of the defendants' counsel confounds " *the powers in question* with those belonging to the de- " fendants in their character as a municipal or public body " —such as are granted exclusively for public purposes to " counties, cities, towns and villages, where the corpora- " tions have, if I may so speak, no private estate or inter- " est in the grant. *As the powers in question* have been " conferred upon one of these public corporations, thus " blending in a measure those conferred for private advan- " tage and emolument with those already possessed for " public purposes, there is some difficulty, I admit, in sep- " arating them in the mind, and properly distinguishing " the one class from the other, so as to distribute the re- " sponsibility attaching to the exercise of each. *But the* " *distinction is quite clear and well settled,* and the process " of separation practicable. To this end, regard should be " had, not so much to the nature and character of the va- " rious powers conferred, as to the object and purpose of " the legislature in conferring them. *If granted for public* " *purposes exclusively,* they belong to the corporate body " in its public, political or municipal character. *But if* " *the grant was for purposes of private advantage and* " *emolument,* though the public may derive a common " benefit therefrom, *the corporation, quoad hoc, is to be re-* " *garded as a private company.* It stands on the same

" footing as would any individual or body of persons upon " whom the like special franchises had been conferred. " (*Dartmouth College* v. *Woodward*, 4 Wheat. 668, 672; " *Phillips* v. *Bury*, 1 Ld. Raym. 8; 2 T. R. 352, S. C.; " *Allen* v. *McKeen*, 1 Sumner, 297; *The People* v. *Morris*, " 13 Wend. 331, 338; 2 Kent's Com. 275, 4th ed.; *U. S.* " *Bank* v. *Planters' Bank*, 9 Wheat. 907; *Clark* v. *Corp.* " *of Washington*, 12 *id.* 40; *Moodalay* v. *The East India* " *Co.*, 1 Brown's Ch. R. 469.) Suppose the legislature, " instead of the franchise in question, had conferred upon " the defendants banking powers, or a charter for a railroad " leading into the city, in the usual manner in which such " powers are conferred upon private companies; *could it* " *be doubted that they would hold them in the same charac-* " *ter, and be subject to the same duties and liabilities?* I " can not doubt but they would. These powers, in the eye " of the law, would be entirely distinct and separate from " those appertaining to the defendants as a municipal body. " So far as related to the charter thus conferred, *they would* " *be regarded as a private company* and be subject to the " responsibilities attaching to that class of institutions. " The distinction is well stated by the master of the rolls " in *Moodalay* v. *The East India Company*, (1 Brown's " Ch. R. 479,) in answer to an objection made by counsel. " There the plaintiff had taken a lease from the company, " granting him permission to supply the inhabitants of " Madras with tobacco for ten years. Before the expira- " tion of that period, the company dispossessed him, and " granted the privilege to another. The plaintiff, prepara- " tory to bringing an action against the company, filed a " bill of discovery. One of the objections taken by the " defendant was, *that the removal of the plaintiff was in-* " *cident to their character as a sovereign power*, the exercise " of which could not be questioned in a bill or suit at law.

"The master of the rolls admitted that no suit would lie "against a sovereign power for anything done in that ca- "pacity; but he denied that the defendants came within "the rule. 'They have rights,' he observed, '*as a sove-* "'*reign power, they have also duties as individuals; if* "'*they enter into bonds in India, the sums secured may be* "'*recovered here. So in this case, as a private company* "'*they have entered into a private contract, to which they* "'*must be liable.*' It is upon the like distinction that *mu-* "*nicipal corporations*, in their private character as owners "and occupiers of land and houses, are regarded in the "same light as individual owners and occupiers, and dealt "with accordingly. As such, they are bound to repair "bridges, highways and churches; are liable to poor rates; "and, in a word, to the discharge of any other duty or "obligation to which an individual owner would be sub- "ject. (2 Inst. 703; *Thursfield* v. *Jones*, Sir T. Jones, "187: *Rex* v. *Gardner*, Cowp. 79; *Mayor of Lynn* v. "*Turner*, *id.* 87; *Henly* v. *Mayor of Lyme*, 5 Bing. R. "91; 1 Bing. N. C. 221, S. C. in the House of Lords.)

3 Hill, p. 541.

In *Atkins & Co.* v. *The Town of Randolph*, 31 Verm't, 237, BARRETT, J., upon a full review of the authorities, says: "It is true, as was urged in the argument, by the "learned counsel for the plaintiffs, that, *in some respects*, "the legislature have a power in respect to *municipal cor-* "*porations* that they have not in respect to private corpo- "rations or individuals. They may alter or abolish mu- "nicipal corporations at pleasure, *but yet not so as to defeat* "*the pecuniary rights of individuals*, as against such cor- "porations, or as depending on their existence. The "legislature have the same power in respect to private cor- "porations, when that power is reserved in the law creating

" them. *So far as a municipal corporation is endowed by* " *law with the power of contracting, and as such, is made* " *capable of acquiring, holding and disposing of property,* " *and subject to the liabilities incident to the exercise of such* " *power and capacity*, thus being invested with legal rights " as to property and contracts, and made subject to legal " liabilities in respect thereto, to be ascertained and en- " forced by suit in the ordinary judicial forums, upon the " same principles and by the same means as in case of a " private corporation, *such municipal corporation must* " *stand on the same ground of exemption from legislative* " *control and interference as a private corporation*, and in " this respect *they* are not affected by the purely municipal, " public and political features that appertain to their cor- " porate existence, *in virtue of and in reference to which* " *alone* they are subject to the absolute control of the leg- " lature."

Poultney v. *Wells*, 1 Aiken, 180–6.
Moodalay v. *Morton*, 1 Br. Ch. 469.

Speaking of these special powers conferred on municipal corporations, for other than purely political or public purposes, Angell & Ames on Cor., sec. 767, p. 880, say: " Public corporations *may, and often do*, have private " rights and interests, *and as to such rights and interests*, " they are to be regarded and dealt with in the same light " as individuals; *and grants of property, and franchises*, " COUPLED WITH AN INTEREST, *to public or political corpora-* " *tions, are beyond legislative control equally with the prop-* " *erty of private corporations.*"

See also, 2 Kent's Com., pp. 275–306, note *b*, and cases.

Thus, upon high authority, it may be stated as a settled rule of law, that whenever *pecuniary rights grow out of, or depend on*, the existence of laws granting to, or conferring

on, a municipal corporation special powers or privileges, *for its private advantage and emolument*, and not necessary to an exercise of its functions as a political or municipal body, the corporation, *quoad hoc*, is to be regarded as a private company, and not as a public body, and, therefore, it is not within the constitutional power of a State legislature, by repeal or otherwise, to take away, divest, or prevent the exercise of such powers or privileges, and thereby defeat the *pecuniary rights of individuals.*

Let us apply these principles to the case under consideration, and see whether it falls within the rule and the reasoning therein contained.

Under the law, the respondent is authorized and empowered *to purchase railroad stock;* to *pay* for the same *either by borrowing money*, at a rate of interest not exceeding ten per cent. per annum, or by issuing, at their face or par value, *interest bearing bonds*, of not less than fifty dollars each, and, as a means or mode of discharging the debt thus contracted, further authorized and empowered to levy and collect a special annual tax upon the property, real and personal, within its corporate limits, and hold the same, when collected, as a fund specially pledged for that and no other purpose.

In pursuance of this power the respondent purchased and became the owner and holder of a large amount of railroad stock, and issued its bonds therefor, with coupons attached. These bonds the railroad company sold to the relator and others, *who purchased and paid out their money therefor upon the security and faith of the law under which they were issued.* With this money the railroad company built a railway, in which the respondent is *a large stockholder*, and as such entitled to its proportion of the income and profits derived, and to be derived, therefrom.

What is there in this law, or in the acquiring, holding,

or disposing of railroad stock thereunder, that appertains to the respondent in its character as a municipal body, or that is necessary to a proper exercise of its functions as a municipal or political corporation? Or, in other words, what has this right of acquiring, holding, and disposing of railroad stock to do with city government? Is it a necessary element of municipal or political power? These questions, it is plain, will admit of no other than a negative answer.

Why, then, contend that the levy and collection of a tax in pursuance of this same authority — the sole object of which being to pay for the stock, or property, purchased thereunder—is an exercise of power belonging to the respondent in its character as a municipal or public body?

The object and purpose of the powers being the private advantage and benefit of the respondent, how can it follow, either as a legal or logical deduction, that the levy and collection of a tax, in pursuance thereof, is an exercise of sovereign power belonging to the respondent as a municipal or public body?

While the premises stand firm, how is it possible thus to shape the conclusion?

Chancellor KENT, in discussing the various kinds of corporations, vol. 2, p. 275, of his Commentaries, says:

"Public corporations are such as are created by gov-
" ernment for political purposes, as counties, cities, towns
" and villages; *they are invested with subordinate legisla-*
" *tive powers, to be exercised for local purposes connected*
" *with the public good*, and *such powers* are subject to the
" control of the legislature of the State. They may also
" *be empowered* to take or hold private property for mu-
" nicipal uses, and such property is invested with the secu-

" rity of other private rights. *So, corporate franchises,*
" *attached to public corporations, are legal estates coupled*
" *with an interest, and are protected as private property.*
" If the foundation be private the corporation is private,
" however extensive the uses may be to which it is devoted
" by the founder, or *by the nature of the institution.*"

Trustees Dart. Col. v. *Woodward*, 4 Wheat., 669.

In *The People* v. *Bond*, 10 Call. Rep., 571, which was a question that grew out of the supposed *repeal* of a statute of 1851, entitled, "An act to authorize the funding of the " floating debt of the city of San Francisco, and provide " for the payment of the same," and the consequent refusal of the assessor of San Francisco to add to the assessment roll of the current year the sum of $145,242, for the payment of interest, and $50,000 for the sinking fund. BALDWIN, Justice, in deciding the case, and discussing the exact question presented in the principal case, says: "The " city of San Francisco, though a *municipal corporation*, " is under the same moral and legal obligation to pay her " debts as an individual citizen. *She must, and may, as* " *well be made to comply with her contracts as a private* " *person;* and we can not see why her contracts are not as " obligatory, *as to the mode in which she agrees to perform* " *them*, as in respect to time, or place, or fact of perform- " ance. *We consider the act* (a private act, it is true, but " none the less binding on that account) *as substantially a* " *trust deed, whereby she agrees, on a valuable consideration,* " *to place in the hands of certain trustees, so much of her* " *revenue and property, to be applied by the trustees to the* " *redemption of her obligations, in the mode and according* " *to the terms of her agreement.* It is too clear for argu- " ment, that if a private individual owes debts, and has

" rents or income, and pledges these to pay his debts to " his creditors, this property and income must be so appro- " priated. *Why not* a corporation? The law makes no " distinction as between these classes of debtors in this " respect, and we see no reason why the courts should.

" *The act of* 1851 *being of this character, it was not* " *competent for the legislature to substantially change its* " *terms, without the sanction of the creditors*, and it there- " fore becomes unnecessary that we should scan the pro- " visions of the act of 1856 to see whether there is any " irreconcilable conflict between the latter and the former " acts. We are saved the necessity of wandering through " the mazes of the complex, though, on the whole, benefi- " cial contrivance, called the Consolidation Bill; *for it is* " *immaterial whether, in its material features, it does or* " *does not conflict with the act of* 1851, *for in either case* " *the act must, in substance, prevail.*

" IT IS URGED THAT THE CITY CAN NOT BE FORCED TO LEVY " TAXES TO RAISE THE MONEY TO BE PAID TO THESE TRUSTEES. " WE DO NOT ADMIT THIS PRETENSION TO BE WELL FOUNDED.

* * * * * * * * *

" The question is not whether, by a legislative altera- " tion of a contract, a party is to be injured seriously or " only slightly. *He has a right to the substance of the con-* " *tract as he has made it.* It is his privilege to judge for " for himself whether it is for his interest for the agree- " ment to be discharged in a particular way stipulated, or " in a different mode; *and neither the courts nor the legis-* " *lature can change it in any substantial particular.* We " say in any substantial particular; for it is not necessary " to hold, in this case, that the corporation, exercising the " powers of a local government, with a uniform fiscal sys- " tem, might not, in order to the enforcement of the re-

" sponsibility of its officers, or to preserve regularity in its " transactions, prescribe some rules, such as manner of " taking receipts, or vouchers, or making entries, or the " mode of making assessments, and the like formal matters " in connection with the payment of the money; *but noth-* " *ing which adds any new risks, delays, or embarrassments,* " *to the execution of their contract, as it is written, can be* " *grafted on its original terms.*

Judge STORY thus announces the constitutional rule: " The invalidity of a State law, as impairing the obligation " of contracts, does not depend upon the extent of the " change which the law makes in the contract; and the " Supreme Court of Massachusetts, in *Blanchard* v. *Rus-* " *sell* (13 Mass. R., 16), say: 'A law made after the exist- " ence of a contract, which alters the terms of it, by ren- " dering it less beneficial to the creditor, or by defeating " any of the terms which the parties agreed upon, essen- " tially impairs its obligations, and, for aught we see, is a " direct violation of the constitution of the United States."

The Supreme Court of Georgia, in *Winter* v. *Jones* (10 Georgia Rep., 190), say: " *A constitutional act of the leg-* " *islature is equivalent to a contract,* and, when performed, " is a contract executed, and whatever rights are thereby " created, a subsequent legislature can not impair."

See, also, to same effect—

15 How. U. S. Rep.
10 How., 205.
New Jersey v. *Wilson*, 7 Cranch, 166.
Robinson v. *Magee*, 9 Cal. R., 81.

" The right of the creditor, under the act of 1851 (4th " section), is declared too explicitly to be misunderstood— " the assessor is to add to the assessment list the amount " of the interest and the $50,000. *This is, however, a*

" *mere mode of raising these sums. The substantial right is,* " *that this sum shall certainly be raised, and that the first* " *moneys collected upon the whole general assessment list* " *are to be paid to the treasurer, and by the treasurer into* " *the hands of the commissioners as soon as collected.* And, " as if mere words were insufficiently expressive when " confined to the prescribing of a duty of prompt payment " by the commissioners, it is provided that no money shall " be applied to any other purpose out of the whole body " of taxes paid in, until the amount coming to the commis- " sioners be paid."

These authorities conclusively establish the correctness of the proposition as a rule of law. The principle contained in them may be thus briefly stated:

When a county or city is, by statute, made capable of *acquiring, holding or disposing* of property, for *its private advantage and emolument*, and, also, made subject to the performance of *specific duties*, or legal liabilities, as a consequence of exercising the powers so conferred, such county, city or municipal corporation *is regarded in law, in respect to the powers conferred and the duties imposed, as a private company, or individuals* vested with legal rights, and made subject to legal liabilities and duties; and, therefore, if, under such statute, third persons have acquired pecuniary rights, dependent on the existence thereof and performance of the duties thereby imposed, no State legislature can, by repeal of the statute or otherwise, constitutionally prevent or relieve the county or city from performing the duty imposed, and thereby defeat, destroy or impair such pecuniary rights.

Having now shown, both upon principle and authority, that the general law of November 6, 1849, and the several supplemental acts of the legislature, under and in pursu-

ance whereof the respondent issued and negotiated the coupons, whereon the relator obtained his judgment, are mere special grants or franchises conferred on the respondent for its private advantage and benefit, and not for public or municipal purposes; and that, in the exercise of the powers and privileges so conferred, and the duties thereby imposed as a consequence of such exercise, the respondent is regarded in law as a private company, and not as a municipal or public corporation, we are led to the second disquisition under which we propose to discuss the case.

II.

THE GENERAL LAW OF NOVEMBER 6, 1849, AND THE SEVERAL SUPPLEMENTAL ACTS OF THE LEGISLATURE, UNDER WHICH WERE ISSUED THE COUPONS, OR INTEREST NOTES, WHEREON THE RELATOR OBTAINED JUDGMENT, CONSTITUTE A CONTRACT, OR CONTRACTS, WITHIN THE MEANING OF THAT CLAUSE OF THE CONSTITUTION OF THE UNITED STATES WHICH DECLARES THAT "NO STATE SHALL PASS ANY LAW IMPAIRING THE OB- "LIGATION OF CONTRACTS," AND, THEREFORE, CAN NOT BE REPEALED.

There are some things which of themselves are so obvious that no logic or reasoning can make them plainer. Like axioms, they are self-evident propositions. So it is of the powers granted to the respondent in the particular case. That these acts of the legislature of Illinois do constitute contracts, within the constitutional limitation referred to, would seem to be too plain to admit of argument. They authorize and empower the respondent, as already

observed, *to purchase railroad stock;* to issue its bonds therefor, bearing interest at a rate not exceeding ten per cent. per annum, and to levy and collect a *special annual tax* upon the property, real and personal, within its corporate limits, sufficient to pay the debt and interest thus contracted; and to enforce the payment of this special tax, which is to be levied and collected at the same time and in the same manner as its "*other taxes*," the respondent has the same powers and remedies, by the sale of property or otherwise, "*as is or may be provided for in other cases* "*relating to its revenue,* * * * *which special tax,* "*when collected,* is to be held separate and distinct from "the other portions of its revenue, as a fund specially "pledged and to be applied in discharge of these bonds "and coupons, and to no other purpose whatever."

These acts of the legislature contain every element of a good law. They *declare* what the respondent may do; *direct* how, at what time, and in what manner, to do the same, and give a *remedy* to compel performance.

"A contract," says Chief Justice MARSHALL, "is a com-"pact between two or more persons, and is either execu-"tory or executed. An executory contract is one in which "a party binds himself to do or not to do a particular "thing. A contract executed is one in which the object "of the contract is performed, and this, says Blackstone, "differs in nothing from a grant. A contract executed, as "well as one that is executory, contains obligations bind-"ing on the parties. A grant, in its own nature, amounts "to an extinguishment of the right of the grantor, and "implies a contract not to re-assert that right."

Fletcher v. *Peck*, 6 Cranch, 137.

This language was used in reference to a grant of land, by the Governor of a State, under a legislative act. It is

simple and unambiguous, and determines, in the most unequivocal manner, that the grant of a State is a contract within the clause of the constitution referred to, and implies an agreement not to resume rights granted, *a fortiori*. The doctrine applies to an act of the legislature granting authority to a city to issue its bonds in consideration of railroad stock, for its private advantage and emolument, and provide for the payment thereof by special taxation.

That these acts of the legislature are grants of special powers and privileges to the respondent, for its private advantage and benefit, and not for municipal purposes, and when acted upon, and bonds issued and negotiated thereunder, fall squarely within Judge MARSHALL'S definition of executed contracts, is, in our humble judgment, a self-evident proposition in law too plain for argument.

Here is every element of a valid and bindiug contract; a grant of special powers by legislative enactment; parties capable of contracting; a consideration and a subject properly the matter of contract. With these elements, under this power, and upon a good and valuable consideration, *an obligation* is entered into, for the faithful performance of which the faith of the respondent, as a *private company* and not as a municipal or public body, is solemnly pledged.

If this be not a contract, then the most profound jurists, of every land wherever civilization has established a rule of civil conduct, have been wofully mistaken in defining the elements which do constitute a contract.

A grant of powers and privileges, when accepted and assented to, is a contract. The concurrence and acceptance is what gives such force to the grant.

4 Wheat., 592.

Do these acts of the legislature possess, in any less degree, the elements of a good contract than a charter grant-

ed by the king, or supreme power of a State, to any given number of persons, or corporators, for religious or educational purposes? Certainly they do not; and surely no one, at this day, would contend, for a moment, that such a charter is not a contract within the meaning of the constitutional provision invoked.

In the celebrated case of *Dartmouth College* v. *Woodward*, which was an action of trover that grew out of an attempt on the part of the legislature of New Hampshire, as revolutionary successor of George the Third, to revoke a charter of this kind, Judge MARSHALL, in delivering the opinion of the court, and speaking of the charter, holds the following language:

"This is plainly a contract to which the donors, the "trustees, and the crown—to whose right and obligations "New Hampshire succeeds—were the original parties. *It* "*is a contract made on a valuable consideration. It is a* "*contract for the security and disposition of property. It* "*is a contract on the faith of which real and personal es-*"*tate has been conveyed to the corporation. It is, then, a* "*contract within the letter of the constitution, and within* "*its spirit also.*"

4 Wheat., 643.

And again, at p. 650 of the same opinion, the learned judge, after answering every objection made and position assumed by the counsel for the defendant, disposes of the first point in these words:

"The opinion of the court, after mature deliberation, is, "that this is a contract, the obligation of which can not be "impaired without violating the constitution of the United "States."

How applicable is this language to the case at bar. Here we have a grant of special powers by legislative en-

actment, authorizing the respondent, as a private company, to *purchase or subscribe* for stock in certain railroad companies, and in *payment* therefor to issue its bonds, and provide for the annual interest on, and the ultimate redemption of, the bonds so issued, by the levy and collection of *a special tax*, to be set aside and held separate and distinct, for that and no other purpose whatever. Under these *powers and privileges* stock is subscribed for, bonds issued and negotiated, pecuniary rights vested, and third parties, *relying upon this legislative grant*, pay out their money, and *bona fidely* become the owners of the bonds and coupons so issued. Is not this "a contract, the obli- "gation of which can not be impaired witout violating "the constitution of the United States?"

But, propably, the most accurate definition of *a contract by legislative grant*, anywhere to be met with, is that laid down by Mr. Justice WASHINGTON, in this same case.

The learned judge, after stating with characteristic terseness, that the question was, whether the charter granted to Dartmouth College, on the 13th of December, 1769, was to be considered as a contract—then asks, what is a contract? and, in answer, says:

"*It may be defined to be a transaction between two or* "*more persons, in which each party comes under an obli-* "*gation to the other, and each reciprocally acquires a right* "*to whatever is promised by the other.* * * **The ingre-* "*dients requisite to form a contract, are—parties, consent,* "*and an obligation to be created and dissolved.*"

Let us apply this definition to the case at bar, and see whether it comes up to these requirements.

In the first place, there is a legislative grant of special powers, enabling the respondent, as a private company, to subscribe for stock in certain railroad companies, issue its

bonds for the amount of such stock, and to provide for payment of the bonds so issued, with interest thereon, by the levy and collection of a special tax.

This grant of power, then, gives us the first ingredient requisite to form a contract; which is, parties capable of contracting and becoming obligated in a particular manner, for, and concerning, a particular subject matter. Following this *grant of powers and privileges*, is the fact of a transaction in strict pursuance thereof. The respondent subscribed for stock in the Northern Cross and Quincy and Toledo Railroad Companies, issued its bonds to the amount of the same, *and obligated itself* to levy and collect a special annual tax upon the property, real and personal, within its limits, sufficient to pay the interest on the bonds so issued, and ultimately to redeem the principal thereof. Here, then, is every ingredient which, according to the definition, is requisite to form a contract—*parties, consent and obligation—whereby each party reciprocally acquired a right to what was promised by the other.*

By the terms of this contract, the respondent, in accordance with the powers granted to it by the legislature, promised to levy and collect an annual tax upon the property, real and personal, within its limits, sufficient to meet the interest on *its obligations.* This promise it disregarded; and, for its failure in that respect, the relator invoked the aid of the court below, and asked it to send forth its mandate, commanding the respondent to comply with its promise in accordance with the terms of its obligation.

That the relator was entitled to this aid, upon the facts, and for the reasons stated, cannot, we submit, upon any real grounds, be for a moment doubted.

" A legislative act, conferring powers and privileges, is " *a grant* which, when accepted, amounts to an extinguish-

" ment of the right of the grantor, and *implies a contract* " *not to re-assert that right*, and, therefore, the legislature " is estopped by its own grant."

Fletcher v. *Peck*, 6 Cranch, 137.
State of New Jersey v. *Wilson*, 7 Cranch, 166.
Sturgis v. *Crowninshield*, 4 Wheat., 122.
Mechs. Bk. Penn. v. *Smith*, 6 Wheat., 131.
Green v. *Biddle*, 8 Wheat., 1.
Bronson v. *Kinzie*, 1 How., 311.
McCracken v. *Hayward*, 2 How., 608.
Gantly's Lessee v. *Ewing*, 3 How., 707.
Planters' Bank v. *Ewing*, 6 How., 319.
Curran v. *Arkansas*, 15 How., 304.
Commissioners of Knox Co. v. *Aspinwall*, 21 How., 239.
Curtis v. *Butler Co.*, 24 How., 446.

These authorities establish, beyond controversy, two propositions, which may be thus resolved, and are at once and forever, decisive of the case at bar—

1st. The legislature had power to incorporate railroad companies, and allow the respondent, as *a private campany*, by contract, to become interested therein, and for that purpose, to issue its bonds, and obligate itself to levy and collect a special annual tax, sufficient for the payment of the principal and interest of the bonds so issued.

2d. The acts of the legislature granting these special powers and privileges, when accepted and acted upon by the issue of bonds, constituted contracts, the obligation of which cannot be impaired without violating the constitution of the United States.

Having now shown, both upon principle and authority, that the powers conferred by the several acts of the legislature authorizing the respondent to purchase railroad stock,

and issue its bonds, with interest coupons attached, for the amount thereof, and to levy and collect a special annual tax upon the real and personal property within its limits, sufficient to pay the bonds and coupons so issued, are not, strictly and legally speaking, powers that pertain or belong to the respondent in its character as a municipal or public body, but that *they are* special grants of powers and privileges conferred on the respondent for its private benefit and advantage, in relation to which the respondent is to be regarded as a private company, standing on the same footing as would any individual, or body of persons, upon whom the like special franchises had been conferred; and that having been accepted and acted upon by the purchase of stock and issue of bonds, these powers constitute contracts, the obligation of which can not be impaired without violating the constitution of the United States. Hence, it follows, as an inevitable corollary, that the act of the legislature of the State of Illinois, approved February 14, 1863, entitled "An act amendatory of the several acts "relating to the city of Quincy, *to provide for raising a* "*revenue therein*, and regulating costs arising under the "charter and ordinances of said city," so far as the same repeals the several laws and parts of laws under which the coupons, or interest notes, in question were issued, by prohibiting the common council of Quincy to levy and collect the special tax which those laws and parts of laws direct to be levied and collected as a means of paying its bonds and interest coupons issued thereunder, is an act impairing the obligation of contracts; and, therefore, being in direct violation of the constitution of the United States, it is void and of no effect as against the relator, and all others having pecuniary rights dependent on the existence of such laws and parts of laws.

But, notwithstanding the fact that the highest tribunal in the land has laid down its exposition of the law in a similar case, and said that the act, under and upon the faith and credit of which, like obligations were issued, is a *contract* whereby the obligor became *legally bound to assess and collect a special tax for the purpose of paying the same*, and that the only remedy which the injured party could have for the neglect or refusal so to do, is the writ of mandamus. Still, it is contended that the relator can not have that relief in this case; that the legislature has power to destroy this corporation, and thereupon its contracts are no longer in existence. Or, to express the same idea in different words, that the legislature created, and can destroy, the corporation; and that if it be in the power of the State thus to destroy the remedies of creditors by repealing the charter of the corporation, their rights must be considered to be entirely subject to the will of the State.

This is no new argument; indeed, it is quite old, and seems not to have gained anything from age. It was strenuously contended for in the case of *Curran* v. *The State of Arkansas*, 15 How., 310, where this court says that *neither the premises nor the conclusion deduced therefrom can be admitted.* Great Britain never insisted upon more power for her parliament, than is here claimed by the learned counsel of the respondent for the legislature of a State; a power which, if established, would not only strike at, but destroy, the very government under which we live. Nothing more could be contended were the State of Illinois a single sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. But such is not the fact; for, in the language of Mr. Chief Justice MARSHALL, who delivered the

opinion of the court in the celebrated case of *Fletcher* v. *Peck*, 6 Cranch, 136—

"*She can not be viewed as an unconnected sovereign State,* "*on whose legislature no other restrictions are imposed* "*than may be found in its own constitution. She is a* "*part of a large empire. She is a member of the Ameri-* "*can Union; and that Union has a constitution, the su-* "*premacy of which all acknowledge, and which imposes* "*limits to the legislatures of the several States, which none* "*claim a right to pass.*"

The argument thus far, has proceeded on the hypothesis assumed by the return—that the act of February 14, 1863, prohibits or deprives the respondent of the power to levy and collect a special annual tax in pursuance of the several laws, under which the coupons, or interest notes, were issued, whereon the relator obtained judgment. But, it is obvious from the language of the law itself, that such was not the intention of the legislature, and that it will not admit of any such construction.

The whole *object and purpose* of the act of February 14, 1863, has relation to the respondent, in *its capacity as a municipal or public body*, and not to the exercise of any special franchises, or powers, conferred on it as a *private company.*

The following are the subject matters, to which it relates:

1st. To amending the several acts, in section two thereof, mentioned.

2d. To providing a particular mode for raising the "*general and special revenues*" of the respondent, *as a municipal or public corporation;* specifying the extent of the

same, and defining the purposes for which it shall be applied, as mentioned in sections 1 and 4 thereof.

3d. To regulating costs and charges, arising under the charter and ordinances of the respondent, as specified in section 3 thereof.

And then follows the provision, that "all laws and parts "of laws, other than the provisions hereof, *touching the levy* "*and collection of taxes* on property within said city, *ex-* "*cept those regulating such collection*, and all laws *conflict-* "*ing herewith*, are hereby repealed."

Without doing violence to the language employed, how can it be pretended that the law, which, by its terms, is a public act, prohibits, or in any manner or way prevents, the respondent from exercising *powers, privileges or franchises*, conferred on it as a *private company*, and in respect to which it stands upon the same footing, with regard to legislative interference or control, as a private corporation or company of individuals.

Bailey v. *The Mayor of New York*, 3 Hill, 539.

4 *Gilman* 221, 1 *Peters Cons* 425, 7 *Johnson*, 520.

The entire defence is thus stated in the printed argument of the learned counsel for the respondent:

"Legislative power and control over the *public reve-* "*nues*—over the *entire subject of taxation*—is a fundamental "element of sovereignty, which must ever remain with the "State; a political power to be exercised consistent with "the public interests or necessities, *and over which the* "*courts have no jurisdiction.* And *no contract*, binding "or controlling the legislature, as to the collection or ap-

" propriation, *under revenue laws*, of future taxes, can, " consistent with the sovereignty of the State, exist. And " by virtue of no contract can a vested interest be created " in any one, in such future unlevied and uncollected " taxes, which, at least, is capable of legal enforcement."

In support of this general proposition the following authorities are cited:

10 N. H., 143, 147.
10 How., 533, 535, 401, 402.
2 Peters, 413, 414.
13 Ills., 27.
13 Wend., 331–2.
5 McLean, 161.
15 Maryland, 378.
33 Penn State R., 278, 285.

With great respect for the learned counsel, we are at a loss how to apply his logic or his law to the case under consideration. That " legislative power and control over " *the public revenues* is a fundamental element of sover- " eignty, which must ever remain with the State, * * " and no contract, binding or controlling the legislature, as " to the collection or appropriation, UNDER REVENUE LAWS- " of future taxes, can, consistent with the sovereignty of " the State, exist," may be admitted as a general proposition, subject to exception.

State of New Jersey v. *Wilson*, 7 Cranch, 166.
Piqua Branch v. *Knoop*, 16 How., 369.
Dodge v. *Woolsly*, 18 How., 331.

But how is the levy and collection of a special annual tax, under and in pursuance of the powers in question, to be deemed an exercise of sovereignty which must ever re-

main with the State? A specific mode whereby the respondent is empowered to provide the necessary means of discharging debts contracted by it as a private company.

The moneys thus to be raised are in no manner or way connected with "*the public revenues.*" Nor is the levy and collection of this special tax, under the laws, strictly and legally speaking, an exercise of sovereign powers belonging to the respondent in its character as a municipal or political corporation. The sole object and purpose of the tax, as well as the powers authorizing its levy and collection, is private, not public. Therefore, the respondent, in respect to the powers conferred by these laws is to be regarded as a private corporation, standing on the same footing as would any individual, or body of persons, upon whom like privileges had been conferred. Or, in the language of the court in the case of *Bailey* v. *The Mayor, &c., of the City of New York*, "The argument of the de-
" fendants' counsel confounds the powers in question with
" those belonging to the defendants, in their character as a
" municipal or public body, such as are granted exclusive-
" ly for public purposes to counties, cities, towns and vil-
" lages where the corporations have, if I may so speak, no
" private estate or interest in the grant. As the powers in
" question have been conferred upon one of these corpora-
" tions, thus blending, in a measure, those conferred for
" private advantage and emolument with those already
" possessed for public purposes, there is some difficulty, I
" admit, in separating them in the mind and properly dis-
" tinguishing the one from the other, so as to distribute the
" responsibility attaching to the exercise of each. *But*
" *the distinction is quite clear and well settled, and the pro-*
" *cess of separation practicable.*

The proposition is based on, and almost in the indentical words of, a *suggestion* offered by the court in the case of

Brewster v. *Hough*, 10 N. H., 145, to the effect that it is not competent for a legislature, by enactment, to make a *contract* perpetually exempting from taxation any portion of the property lying within the government. That the right to levy and collect taxes, being an element of sovereignty, *it* is so far *inalienable*, that no legislature can make a *contract* by which it shall be surrendered.

This, however, is not law; for, according to the doctrine of this court in the case of *The State of New Jersey* v. *Wilson*, 7 Cranch, 164, it is laid down by Chief Justice MARSHALL, after solemn consideration, as a settled rule, that a State may do so through its legislature, and that the law is a contract within the meaning and protection of the constitution of the United States. Therefore, if an act of the legislature, perpetually exempting from taxation certain portions of the State, or property of its citizens, lying within the government, is a *contract*, within the meaning and protection of the constitution, it would seem to follow, as an inevitable conclusion, that a law authorizing the citizens of a particular municipal locality, or division of the State, to levy and collect a special annual tax on the property, real and personal, lying within that locality as a means or mode of paying indebtedness contracted by it under the authority and upon the faith of such law, is also a contract, which can not be repealed to the prejudice of third persons having pecuniary rights or interests depending on the existence thereof, without violating the constitution of the United States.

The following cases are to this effect:

Atwater v. *Woodbridge* 6 *Conn.* 223.
Osborn v. *Humphrey* 7 Id. 335.
Parker v. *Redfield* 10 Id. 495.

Landon v. *Litchfield* 11 Id. 251.
Armington v. *Barnet* 15 Vt. 751.
Henich vs. *Randolph* 13 Id. 255.

Suppose the legislature, instead of the franchise in question, had conferred on the respondent a charter to build, equip and operate a railroad running into the city, with the right to sell, transfer or dispose of the same, as it should see proper, and to that end had authorized *it* to issue and negotiate its bonds to the amount of five millions of dollars, payable in twenty years, with interest semi-annually, at the rate of ten per cent. per annum, and to provide for the ultimate payment of such bonds, as well as the semi-annual interest to accrue thereon, by the levy and collection of a special annual tax upon the property, real and personal, within its corporate limits; and that, in pursuance of such power, the respondent issued and negotiated its bonds to the full amount authorized, and with the proceeds thereof built and equipped a railroad, and afterwards, years before its bonds become due, finding the investment unprofitable, sold and transferred the railroad to third parties and received its pay therefor, would it be contended, in such a case, that the legislature could, by a repeal of the law under and upon the faith of which the bonds were issued and negotiated, prevent the levy and collection of such special annual tax, and thereby deprive the bondholders of their only remedy to compel payment? We deny that any such pretended power rests with the legislature of a State.

Despots or tyrants might claim it, but it can have no sanction in a government of laws. Such a power, if established, would not only compromise, but annihilate, every feature of our social system. Those who claim such power, as an attribute of sovereignty that must ever remain with the State,

we leave to discuss the question with Chief Justice NELSON, who, in the course of his opinion in *Bailey* v. *The Mayor of New York*, after giving the precise case as an example thus disposes of it:

"*These powers, in the eye of the law, would be entirely* "*distinct and separate from those appertaining to the de-* "*fendants as a municipal body. So far as related to the* "*charter thus conferred, they would be regarded as a pri-* "*vate company, and be subject to the responsibilities attach-* "*ing to that class of institutions.*"

3 Hill, 540.
Story on Constitution, sec. 1393.
2 Kent's Com., p. 275.
Angell & Ames on Cor., sec. 767, p. 880.
Parsons on Cont., vol. 2 p. 685.
Terrett v. *Taylor*, 9 *Cranch* 43.
Town of Pawlet v. *Clark*, 9 *Cranch*, 292.
Hazen v. *Union Bank Tenn.*, 1 *Smeed* 115.
4 Wheat. 518.

Having now disposed of the several theories upon which the relator's claim to the writ of right is resisted, and shown the same to be without foundation in law, and wholly without a foothold in justice; and that the several acts of the legislature, under which the coupons were issued, whereon the relator obtained his judgment, are special private francises, which, in the eye of the law, are entirely distinct and separate from those appertaining to the respondent as a municipal body, and that in respect thereto and in the exercise thereof, the respondent *is to be regarded as a private company*, standing on the same footing as would any individual or body of persons upon whom the like special franchises had been conferred, and therefore,

that these acts of the legislature are contracts within the meaning of the constitutional limitation, and consequently that the act of February 14, 1863, so far, if at all the same, repeals the laws, or parts of laws, under which the coupons were issued, *is a law impairing the obligation of contracts*, and that the only remedy which the injured party can have in such case is the writ of mandamus. I maintain that there can be no question as to the relator's right to this high prerogative writ, commanding the city forthwith to perform the plain duty which the law imposed upon it when it entered into these obligations, and affixed thereto the broad seal of the city, as an assurance to all the world both of its right to create the debt, and of its ability to exercise this special power, as a mode of raising means to pay it and redeem its plighted faith and solemn promise.

The case presents for consideration, grave constitutional questions, which, in many respects, are of first impression. The validity of a legislative act is to be examined and determined,—a question ever to be approached with great caution and circumspection. The power of a State to disrobe municipal corporations of the private franchises and privileges conferred on them by legislative enactment, and thereby prevent the enforcement of individual pecuniary rights created thereunder, and depending on the security and existence thereof, is to be tested by the supreme law of the land. That these are questions of great delicacy, all will acknowledge, but they are constitutional questions; and, consequently, on the judges of this high tribunal is imposed the solemn duty of answering, from the judgment seat of the nation, whether the acts of the legislature of Illinois, under, and in pursuance whereof, the coupons, or interest notes, were issued, whereon the relator obtained judgment, *are contracts*, within the meaning of the constitution of the United States, and, therefore, to be protected

from legislative violation; or, whether they are mere *nude pacts*, invented for the purpose of enabling municipalities to openly defraud the public, and then seek a sanction under the sovereignty of *legislative repudiation*.

In disposing of this great question, let the motto be, as in this court it has ever been, "*Fiat justitia, ruat coelum.*"

JOHN J. McKINNON,
Attorney for Relator.

21 Cal 69) Irwin v Sanf
Acts 4 Mem. 85
1 How 307

Supreme Court of the United States.

THE UNITED STATES EX. REL.
LOUIS A. VON HOFFMAN.
vs.
THE CITY OF QUINCY.
} No. 90.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

The relator filed his petition for a *mandamus* to compel the Defendant in Error to levy a special tax upon the real and personal property, situate within the said City of Quincy, for the purpose of satisfying and paying a judgment recovered by him against the city.

In accordance with the General Statute of Illinois of November 6, 1849, and the Special Acts of February 17, 1851, of January 26, 1853, and January 31, 1857, marked Exhibits 1, 2, and 3, on pages 4, 5, and 6 of Record, the City of Quincy subscribed for and took certain stock in the Northern Cross and Quincy & Toledo Railroad Companies, and in payment thereof issued its bonds, with coupon notes attached. By the said Act of 1851, and by the fourth section of said Act of 1853, and by the fourth section of the Act of 1857, the said City was authorized to levy and collect a special tax, separate and distinct from other taxes levied for the purposes of its general revenue, to pay the interest upon the bonds issued under the laws referred to. The relator, being the owner and holder of certain of the coupons or interest notes issued with said bonds, and thereto attached, and negotiated by the said City as parcel of said bonds, sued and recovered judgment thereon in the Circuit Court of the United States for the Southern District of Illinois, on the 10th of June, 1863, for $22,206.69; and, thereupon, issued a Writ of Fi Fa., upon which the Marshal made return of demand and refusal by the Defendant, and a further return of *nulla bona* (see margin, page 6 of Record.) Thereupon the relator applied for the Writ of Mandamus to compel the City of Quincy to levy and collect a special tax sufficient to pay his said judgment, interest and cost, and when collected to pay over the same in satisfaction of the judgment. This application was resisted by the City upon the ground that the Legislature

of Illinois, by an Act of February, 1863, (p 10 of Printed Record,) had repealed the laws authorizing a special tax for the purposes aforesaid, and had limited the amount of taxes to be collected by said City, and that the taxes levied under said Act of 1863 were *absorbed by other necessary expenditures of the City*, and that the City had no legal power to make any further levy for any purpose. The answer to the petition for mandamus (p. 9 and 10 Printed Record) admits the recovery of the judgment, and that the coupons, which were the cause of action therein, were issued under the several Special Acts of Assembly aforesaid, which authorized special taxes for the payment thereof. The Court below refused the writ and dismissed the petition.

FIRST. Had the Court below power by *mandamus* to compel the City of Quincy to levy and collect a tax to pay the judgment obtained against the City for interest on its bonds issued under the special authority above-mentioned?

The Board of Commissioners of Knox Co. vs. *Aspinwall*, 24 Howard, 376; same case, 21 Howard, 539.
The Commonwealth vs. *Commissioners of Alleghany*, 4 Wright's Pa., 348.
The U. States ex. rel. Learned vs. *Mayor of Burlington*, U S. Circuit for Iowa, 2d An. Law Register, New Series, p. 394.

SECOND. The Special Acts of the General Assembly of Illinois authorizing the special taxes constituted a part of the contract with the parties holding the bonds and coupons issued under those Acts, and are protected against their repeal by the 10th section of the First Article of Constitution of the United States.

Curran vs. *The State of Arkansas*, 15 Howard, 304, 309.
Rice vs. *Railroad Co.*, 1 Black, p. 373.
Jefferson Bank vs *Skelly*, 1 Black, p. 36.
Fletcher vs. *Peck*, 6 Cranch, 87.
Terrett vs. *Taylor*, 9 Cranch, 43.
Town of Pawlit vs. *Clarke*, 9 Cranch, 252.
Bronson vs. *Kinzie*, 1 Howard, 311.
McCracken vs. *Hayward*, 2 Howard, 608.

Planters' Bank vs. Sharp. 6. How 301.
The People vs. Bond. 10. Cal. 571.

The Act of 1863, *attempting to revoke the power vested in the corporate officers to levy a special tax to pay a debt incurred on the faith of the existence of the power, is not distinguishable from a law prohibiting the Sheriff from selling on execution, except on certain conditions.*

McCracken vs. *Hayward*, 2 Howard, 71.

THIRD. A State Legislature may bind itself by contract as effectually as a private person.

Jefferson Branch Bank vs. *Skelly*, 1 Black, 349.
Billings vs. *The Providence Bank*, 4 Peters, 514.
Gordon vs. *Appeal Tax Court*, 3 Howard, 133.
The Richmond, F. & P. Railroad Company vs. *The Louisa Railroad Company*, 13 Howard, 71.

FOURTH. The bonds in question were valid and negotiable, and the holder of coupons detached from the bonds had a right of action thereon.

Thompson vs. *Lee County*, 3 Wallace, 327.

R. T. MERRICK,
Of Counsel for Plaintiff in Error.

UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES,

December Term, A. D. 1864.

THE UNITED STATES, *ex. rel.*
LOUIS A. VON HOFFMAN,
vs.
THE CITY OF QUINCY.

Error to the Circuit Court for the Southern District of Illinois.

ARGUMENT,

FOR DEFENDANT IN ERROR.

UNITED STATES OF AMERICA.

SUPREME COURT UNITED STATES.

DECEMBER TERM, A. D. 1864.

THE UNITED STATES, *ex. rel.*
LOUIS A. VONHOFFMAN,
vs.
THE CITY OF QUINCY.

Error to the Circuit Court for the Southern District of Illinois.

ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT OF CASE.

Mandamus to compel the levy and collection of a special tax in the city of Quincy, to pay a recovery of the relator against said city. The judgment below was for the defendant, upon demurrer of plaintiff to return of defendant to the alternative writ.

The writ alleges that the relator was possessed of interest coupons of bonds of said city, issued in payment of city subscription to the capital stock of the Northern Cross Railroad Company, and the Quincy and Toledo Railroad Company, "under and in pursuance of the general law and certain Acts of the "Legislature of the State of Illinois, as by said acts,

"copies whereof are hereto annexed, marked 1, 2, 3, "will more fully appear." That the relator brought suit in the Court below, on said coupons, and recovered judgment against the city thereon, which recovery is sought to be satisfied by compelling the levy of said special tax and the appropriation of the same in payment of the recovery. The Acts relied on and made a part of the record are, Act of February 17, 1851, which authorizes the city of Quincy to levy and collect a special annual tax, "sufficient for the "payment of the annual interest which may accrue "upon any bonds to be hereafter issued by said city "for railroad purposes, *under the provisions of an Act "entitled, 'An act supplementary to an act entitled an "act to provide for a general system of railroad incorpo- "rations,' in force the 6th day of November, A. D.* 1849," and which act provides that "said tax, *when collected,* "shall by said city be set apart as a special fund "pledged for the payment of the annual interest on "the bonds aforesaid." The act of January 26, 1853, which authorizes the issue by said city of an additional one hundred thousand dollars of bonds, empowers the city "to levy and collect a special tax" to pay interest on said bonds, in the same manner as is provided by said act of 1851. The act of January 31, 1857, which incorporates the Quincy and Toledo Railroad Company, and validates other two hundred thousand dollars of bonds of said city, issued in payment of subscription of said city to the capital stock of said last mentioned corporation, as follows: "And "all bonds of said city of Quincy, issued or to be is-

"sued, in payment of said subscription of two hun-
"dred thousand dollars, shall in all respects be and
"are hereby made a debt of said city of Quincy, due
"to the holder or holders of such bonds, contracted by
"said city under authority of law." The only general law of the State of Illinois, touching the issue of bonds by municipal corporations, is the act referred to in said acts of 1851 and 1853, as "An act supplemen-
"tal to an act entitled, 'An act to provide for a general
"system of railroad incorporations,' in force the 6th
"day of November, A. D. 1849," which authorizes cities and counties to subscribe to the stock of railroad companies to an amount *not exceeding one hundred thousand dollars*, and to borrow money, or issue bonds to pay the same. Laws of Illinois, second session of 1849, page 28.

The writ alleges power in the city of Quincy, under said special acts, "to levy and collect a special annual
"tax upon the property, real and personal, in said
"city," "sufficient for the payment of annual interest
"which should accrue or become due upon any bonds"
"issued by said city of Quincy for railroad purpo-
"ses, *under the provisions of*" the "*act supplemental to*
"*an act entitled 'An act to provide for a general system*
"*of railroad incorporations, in force 6th November,*
"1849." That the city fails and refuses to levy and collect said special tax, or pay said recovery, and prays for a peremptory writ commanding the levy and collection of the same, and its appropriation to the satisfaction of the relator's said recovery.

The return certifies, that there is no money in the treasury of the city to pay the recovery, nor was at the time of the demand alleged—sets forth an act of the General Assembly of the State of Illinois, in force February 17, 1863, which provides as follows:

"§4. The city council of said city shall have "power to levy and collect, annually, taxes on real "and personal property within the limits of said city "as follows: on real and personal property within, "or which hereafter may be within, portions of said "city lighted with gas, to meet the expenses thereof, "not exceeding twenty-eight cents on each one hun- "dred dollars per annum on the annual asessed value "thereof. On all real and personal property within "the limits of said city, to meet the expenses of ob- "taining school grounds and erecting, repairing and "improving school buildings and school grounds, and "providing teachers and maintaining public schools "in said city, and to be devoted exclusively for such "purposes, not exceeding twenty-five cents on each "one hundred dollars per annum on the annual as- "sessed value thereof: Provided, that no more than "eighteen cents on each one hundred dollars afore- "said, shall be levied in any year for such purposes, "without the concurrence of a majority of the votes "of the legal voters of said city to be cast at an elec- "tion to be ordered by said city council, and held to "determine the rate per cent. so to be levied. On all "real and personal property within the limits of said "city, to pay the debts and meet the general expen-

"ses of said city, not exceeding fifty cents on each one "hundred dollars per annum on the annual assessed "value thereof."

"§5. All laws and parts of laws other than the "provisions hereof, touching the levy or collection of "taxes on property within said city, except those reg- "ulating such collection, and all laws conflicting here- "with, are hereby repealed; but this act shall not "affect taxes of said city relating to streets or alleys, "or to licenses of whatever nature, nor any source of "revenue other than taxes upon real or personal pro- "perty."

Session Laws of Illinois, private, 1863, page 172.

The return certifies, that said act is in force, and that since its passage the city has exhausted its powers of taxation by the levy and collection of taxes to pay the debts and meet the municipal expenses of the city, to the full limit provided by said act, and alleges willingness so to do; certifies that since the passage of said act the city has levied no other taxes than under said act, and that the proceeds of the same are not sufficient to pay the expenses of the municipal government of the city and the debts of the city. The return sets forth the levy of taxes in said city for the current year, 1864, and shows that its powers of taxation under said act of 1863 are exhausted by full exercise of the powers therein conferred and limited, and the proceeds thereof have been appropriated to pay the current municipal expenses of the city government and the debts of the city.

The return denies that the relator's recovery is

founded upon coupons of bonds of the city issued under the provisions of said act of November 6, 1849, as in the writ is alleged; and certifies that said city under the provisions of said act, or general law, of 1849, issued bonds to the amount limited by said act, of one hundred thousand dollars, and, under the provisions of said special act of 1853, issued another amount of one hundred thousand dollars,—and that said city afterwards issued its bonds to the amount of two hundred thousand dollars without any authority of law, and that these last bonds were validated and made a debt of said city by the act of 1857; that the relator's recovery is founded upon coupons of said several three classes of bonds, stating a large amount of each class as embraced in said recovery;—and shows that the acts of 1851 and 1853, providing for a special tax to pay interest on certain bonds, has no application to coupons of bonds made a debt of the city only by the act of 1857;—and that the recovery is founded upon a large amount of these coupons together with coupons of bonds to which said acts of 1851 and 1853 do apply.

ARGUMENT.

POINTS AND AUTHORITIES.

I.

The powers of municipal corporations depend upon the will of the Legislature, and they can levy only such taxes as are authorized by statute at the time of the levy. They are creatures of the Legislature and dependent upon its will in all respects.—13 Ill. R., 27; 20 ibid., 252, 254; 21 ibid., 500—509; 19 N. Y. R., 116, 117, 118; 25 Georgia R., 610—612; 19 Ohio R., 348; 12 La. Ann., 516, 517; 17 Georgia R., 59, 60; 11 Texas R., 705, 706.

To authorize a municipal corporation to levy taxes, there must be an *unequivocal* delegation or an express grant of the power by the Legislative department of the State.—Blackwell on Tax Titles, 523 and cases there cited; United States *ex. rel.*, &c., vs. City of Burlington; American Law Register for May, 1863, page 394. This last case is very similar to the case presented by this record.

Mandamus lies only where there is a *clear legal right* to have a specific thing done by the public officer. And when the Legislature has *inhibited* a city from levying a tax exceeding a certain limit, no Court can compel it by mandamus to override the legislative limitation.—27 Barb. R., 93; 29 Barb., 98; 10 Cal., 404, 410; 22 Texas, 31, 32.

The act of 1863, set up in the return, fixes the max-

imum of taxation by the city, to meet certain municipal expenses and to pay the debts of the city, at fifty cents on the hundred dollars. This tax has been duly levied, to the limit authorized, and therefore the city has failed to execute no power of taxation. This act is clear and explicit, leaving no room for construction. Three purposes of taxation are named: to pay for lighting with gas, not exceeding twenty-eight cents on the one hundred dollars;—to pay for schools, not exceeding twenty-five cents on each one hundred dollars;—and to pay the general expenses and the debts of the city, not exceeding fifty cents on the one hundred dollars. And "all laws and parts of laws, other "than the provisions hereof, touching the levy or "collection of taxes on property within said city, are "hereby repealed." And the act is declared not to affect other sources of revenue "than taxes upon real "or personal property." The intention of the act is therefore free from question.

But it is understood, the relator claims that this act, in so far as it operates to repeal prior laws for raising revenue to pay the debts upon which this judgment is founded, impairs the obligation of the contract, and is therefore void. In answer to this assumption, we submit:

Legislative power and control over the public revenue, over the entire subject of taxation, is a fundamental element of sovereignty which must ever remain with the State, a political power to be exercised consistent with the public interests, or necessities, and over which the Courts have no jurisdiction. And no

contract binding or controlling the Legislature as to the collection or appropriation, under revenue laws, of *future* taxes, can, consistent with the sovereignty of the State, exist. And by virtue of no contract, can a *vested* interest be created in any one in such *future, unlevied and uncollected taxes*, which, at least, is capable of legal enforcement.

As a general rule, any act may be repealed by the authority that created it. Yet there may be legislative grants of property, or of franchises, which becoming vested rights of property, assume the character of contracts; but such rights of property can never arise out of delegation to municipal corporations of the power to levy taxes; nor out of a pledge of *public faith*. And he who relies upon a delegation of power to a municipal corporation, on the subject of public revenue, or taxation, or a pledge of public faith, does so with the *presumed* condition, that such power may at any time be changed or revoked.

Corporations of a purely public and political character, however they may have originated, exercise their powers through public officers, as a part of the political government of the State, and are subject to the paramount authority of that government. They may be capable of taking and executing private trusts, and where they have done so the Courts may protect the trust property, though the government by its plenary authority over them, should annihilate the corporation, or incapacitate it from executing the private trust. The Dartmouth College case clearly settles the doctrine as to what are public or political corpo-

rations and concedes plenary power over them in the Legislature. This Court held the college to be a private eleemosynary corporation, and hence, under the constitution, protected from legislative control.

"It is chiefly for the purpose of clothing bodies of "men in succession with these qualities and capaci- "ties, that corporations were invented and are in use. "By these means, a perpetual succession of individu- "als are capable of acting for the promotion of the "particular object, like one immortal being. But this "being does not share in the civil government of the "country, unless that be the purpose for which it was "created. Its immortality no more confers on it po- "litical power, or a political character, than immortal- "ity would confer such power or character on a nat- "ural person. It is no more a State instrument than "a natural person exercising the same powers would "be. If, then, a natural person, employed by indi- "viduals in the education of youth, or for the govern- "ment of a seminary, in which youth is educated, "would not become a public officer, or be considered "as a member of the civil government, how is it that "this artificial being, created by law for the purpose "of being employed by the same individuals for the "same purposes should become a part of the civil "government of the country? Is it because its ex- "istence, its capacities, its powers are given by law? "Because the government has given it the power to "take and to hold property, in a particular form, and "for particular purposes, has the government a con- "sequent right substantially to change that form, or

"to vary the purposes to which the property is to be "applied? This principle has never been asserted or "recognized, and is supported by no authority. Can "it derive aid from reason?" "The character of civil "institutions does not grow out of their incorporation, "but out of the manner in which they are formed, "and the objects for which they are created. The "right to change them is not founded on their being "incorporated, but on their being the instruments of "government created for its purposes. The same in- "stitutions, created for the same objects, though not "incorporated, would be public institutions, and, of "course, controllable by the Legislature. The incor- "porating act neither gives nor prevents this control." Dartmouth College case, 4 Wheaton, 637, 638.

"From this view of the charter, it appears that Dart- "mouth College is an eleemosynary institution;"— "that its trustees or governors were originally named "by the founder and invested with the power of per- "petuating themselves; that they are not public offi- "cers nor is it a civil institution, participating in the "administration of government." Ibid., 641.

In the separate opinions of Justices Washington and Story, the rule is declared to be, that corporations for the government of communities, such as "towns, cities and counties," being "public institu- "tions," are always subject to State control, by regulating, enlarging or limiting their powers according to the will of the Legislature. Ibid., 658 to 666.

The city of Quincy was created by the Legislature for the purposes of civil government alone,—for pub-

lic, not private, ends. The State was the only party to the charter. No acceptance, by any one, of chartered privileges was essential to give it a political being, nor could the default of individuals forfeit the charter. It is but an instrument of government, exercising political power through the agency of public officers only. Individuals may be interested in having certain powers continued in or conferred upon the city, by reason of being its creditors or otherwise; but they are political powers to be exercised only through public functionaries, in which the individual can have no more a *contract right* than he could in the powers of any one of the three departments of the State government, or of any officer thereof. Although the State may empower a municipal corporation to issue bonds and provide for future taxation of property within the municipality to pay them, and bonds accordingly issue, this, in the sense of the constitution of the United States, creates no contract between the holder and the State, that the State will not exercise its political authority over the subject of taxation therein. And this is the doctrine established by this Court in the recent case of Gilman, vs. City of Sheboygan, 2 Black, 510. In this case the Legislature had by statute authorized the city of Sheboygan to issue bonds and provided, that the city should annually levy a tax upon *all taxable property* of the city sufficient to pay the interest on the bonds. The bonds were issued under this statute. A subsequent statute limited the power of taxation of the city to pay interest on these bonds, and the question as to the constitu-

tionality of this act came up. The ground taken, as here, was that the act under which the bonds were issued, providing future taxation by the city for payment of annual interest on them, and the issue and negotiation of the bonds thereunder, constituted a contract between the holder and the State which under the constitution legally bound the State. This Court decided otherwise, and say: "Was there such a con-"tract as is averred in the amended bill? The act of "1854 authorized the borrowing of money, the issuing "of bonds, and the levying of a tax upon all the pro-"perty in the city, for the purposes specified. The "imposition, modification and removal of taxes, and "the exemption of property from such burdens, is an "ordinary exercise of the power of State sovereignty. "There is no pledge, express or implied, that this "power should not thereafter be exercised. Admit-"ting that the State *could* enter into such an engage-"ment, there is no evidence that it *did*. This fact "should never be assumed unless the language used "be too clear to admit of doubt." Page 513.

Nor is there any evidence from the acts of the Legislature of Illinois, in this case, of any *intention* to divest the State, *if such a thing were possible*, of its continuing power over the future public revenue. The question here, is not whether the Legislature may not, for supposed public benefits to be derived from public enterprizes of individuals or private corporations, exempt their property from taxation, or accept the public benefits to accrue therefrom, in lieu of taxation of their property, and thereby effect a con-

tract, protected by the constitution, with the party accepting the grant and performing his undertaking in the acceptance implied. This is a different thing from binding the Legislature to continue for a period of years, or, perpetually, a municipal government, to clothe the officers thereof with agreed powers, and abandon legislative authority over that government and the powers of the public officers thereof.

These powers of government, we insist, are not a legitimate subject of contract betwen the State and a citizen, or private corporation; nor would such a contract, if made, be within the provisions of the constitution of the United States forbidding States from passing laws impairing the obligations of contracts.

The right of the People, in an orderly manner, to change their form of government, and through their representatives to modify, change or abolish their systems of local government, such as towns, counties and cities;—to modify or abolish their modes of taxation and substitute other modes;—to abolish public offices or regulate the powers and duties of public officers, is necessarily a continuing right and power which may not be contracted away beyond the power of resumption.

"The power of taxation is essentially a power of "sovereignty, or eminent domain; and it may well "deserve consideration whether this power is not in- "herent in the people, under a republican form of "government, and so far *inalienable* that no legislature "can make a *contract* by which it shall be surren- "dered."

"There is a material difference between the right "of a legislature to grant lands, or corporate powers, "or money, and a right to grant away the essential "attributes of sovereignty, or rights of eminent do- "main. These do not seem to furnish the subject "matter of a contract." 10 N. H., 143, 147.

To be a contract within the meaning of the constitution, the right must be such that an action could be founded upon in a court of justice. 3 How., 534, 550.

A municipal corporation obtained from the legislature ferry privileges, which were afterwards repealed; held to be no contract,—that the State having the power to even abolish the corporation, could not confer upon it rights which it could not take away; that all powers conferred on them could be controlled or resumed by the legislature in virtue of its sovereignty, and that all grants to such public corporations are made upon condition that they may be defeated or resumed at the will of the legislature. 10 How., 533, 534, 535.

"It is an unsound proposition that political power "conferred by the legislature can become a vested "right *as against the government*, in any individual or "body of men." 13 Wend., 331, 332.

A statute which divests a right, even an existing right of property, may be valid, provided the statute do not operate upon and impair a *contract*. It is only when the statute by its own force, impairs or destroys the *contract* that it is void under the constitution. 2 Peters, 413, 414; 10 How., 401, 402.

A statute granting money to a private corporation

or individual, to be acquired in *futuro*, and through the official action of *public agents*, may be repealed at any time before the acquisition and application of the money, and the grant defeated before it is *fully executed*. Such a grant is not a *perfect obligation* capable of enforcement. Trustees, &c., vs. Rider, 13 Connecticut, 87.

A statute giving a new remedy to *defeat* usurious contracts is constitutional, even as to existing contracts and judgments upon them. 7 Humphrey, 130; 1 Maryland Chy., 66.

Powers or franchises granted to municipal bodies are subject to full control of the legislature. 13 Illinois, 27.

Provisions in a railroad charter, providing for county subscription to stock and collection of tax to pay the same, are *no contract* between the State and the railroad company, and may be repealed at any time before they are *complete* by full *execution*. The legislature may take away by statute what by statute is granted, unless by *execution* of the *powers* granted, private rights in some definite thing or property have become vested. 12 B. Munroe, 147, 148; 6 Wendel, 531.

A legislative act cannot impair the obligation of a contract, unless at the time of its passage, some one *not subject to legislative control*, "by *contract with the* "*State*, has been vested with *certain*, *perfect*, *absolute* "*rights of property*," and which rights are divested or impaired by such act. 10 Howard, 400, 401.

"The contracts designed to be protected, are con-

"tracts by which perfect rights, *certain, definite, fixed* "*private rights* of property are vested." 10 How., 416, 417; 23 Barb., 60, 61, 62.

"The right to imprison (for debt) constitutes no "part of the contract; and discharge of the person of "the party from imprisonment does not impair the ob- "ligation of the contract, but leaves it in full force "against his property and effects." 9 Peters, 359.

The *contract*, although the right to take the body to satisfy the debt is abolished by statute, remains unaffected and may be enforced against the debtor's property. 6 Blackford, 373.

Title to property may be divested by curative statutes, by validating marriages, or legitimatising issue. 4 Conn., 209, 210.

"Where a law has conferred an extraordinary rem- "edy upon a *class* of creditors, a statute taking away "such remedy, but leaving the ordinary means for "collection of the debt in full force, is not, though "operating upon existing contracts, a *law impairing* "*the obligation of contracts.*" 3 Denio, 274, 276, 277.

A. gave a prison limits bond; by an act of the legislature he was discharged from arrest and imprisonment, and the act was held valid. 12 Wheaton, 370.

The legislature of California passed a law for funding the debts of a county, changing the time and manner of payment, and *prohibited* payment of any debts not so funded; held that as the county was a municipal body, the legislature had full control of its revenues and payment of its debts, and the law did

not therefore impair the creditor's contract in the sense of the constitution. 5 California, 288.

"Although a *contract* provides that the party may "resort to a specific legal remedy, for its enforcement, "an act of the legislature abolishing such remedy "does not impair the obligation of the contract." 14 N. Y., 23, 28, 29; 3 Kernan, 289, 303.

The abolishment of a court in which judgments remain unsatisfied, depriving parties of the means of their present satisfaction by execution, does not impair the contract. 17 Ill., 344.

"All statutes are repealable, unless they assume "the *form and substance of contracts.*" 5 McLean, 161.

The legislature passed a law imposing personal liability upon the stockholders of certain private corporations for corporation debts, the law held constitutional as to subsequent debts. After such debts had accrued, this law was repealed,—held that the repeal was constitutional, and that as the liability and rights were *created* by *statute*, the repeal impaired no contract; that there were no vested rights of property to impair in the sense of the constitution; that the legislature could by repeal take away what was given by statute, except vested rights, and that such rights only vested by recovery of judgment prior to the repeal. 45 Maine, 510, 511, 512; 6 Wend., 526.

"The legislature must necessarily possess the power "to determine by law in what manner the person or "property of the debtor shall be subjected to the de- "mands of the creditor. And in doing so one may be

"deprived of a right which he has by existing laws."

"When a person by existing laws becomes entitled "to a judgment, or to have certain real or personal "property applied to the satisfaction of his debt, he "is apt to regard the privilege as a vested right, not "considering that it has its foundations only in the "remedy, which may be changed, and the right there- "by destroyed." Held, also, that the legislature may take away rights given by statute, until those rights are perfect and vested by *judgment recovered.* 18 Maine, 109.

Plenary jurisdiction and control over the entire subject of taxation appertains alone to the legislature, as an element or incident of sovereignty, and the legislature is responsible only to the people for the manner in which that jurisdiction and control are exercised, and the judiciary has no power over the subject. And in the nature of things that jurisdiction must be exercised from time to time, with no limitations, except such as the State constitution has imposed, according to the judgment of the legislature; nor can it be aliened, granted or contracted away, beyond the power of resumption.

No contract therefore can be made by one legislature appropriating *future* revenues, which shall bind a subsequent legislature or the people. 15 Maryland, 378, 379.

The legislature of Pennsylvania had pledged the revenues of the State canals to the payment of certain State bonds. Afterwards an act was passed for the sale of these canals, and different appropriation of the

proceeds. The Court say: "It is urged that when "the State was contracting her public debt, to con- "struct her canals, she pledged their income for the "faithful payment of the principal and interest there- "of, and that she cannot in good faith to her creditors "part with that income for any other purpose. This "objection assumes that this sale is an improper one "and is really a diversion of the pledge, and we may "allow it the advantage of this assumption. It as- "sumes, moreover, that this court has authority, di- "rectly or indirectly, to enforce the pledge; and this "we are not prepared to admit. How the objection "might be answered as a question of morals, we are "not to discuss, for we can exercise no authority on "that ground. If this court has no legal or constitu- "tional authority to enforce the pledge, we have none "to declare that it has been violated; and most cer- "tainly no such authority has been proved to us, and "we know of none. The State also pledged *its faith* "*and credit* for the same purpose, and it would not be "pretended that we have authority to *coerce the legis-* "*lature to respect this part of the pledge by providing* "*adequate taxation.* Legislative motive may be im- "moral and faithless, but *acts* alone can be constitu- "tional."

The diversion of the pledge made by the legislature, held to be without legal redress. 33 Penn. State R., 278, 281 to 285.

"Where power exists to do a particular thing, and "the thing is done, the reason which induced the act "is not to be looked into by the courts. The power

"may be abused; but the abuse of the power cannot "be avoided by the judiciary."

"The members of the legislature may vote for a "measure from erroneous or improper motives. The "only question with the courts is, whether that body "had the *power* to command the particular act to be "done or omitted." 9 Cal., 515.

"The legislature has no power to alienate any of "the rights of sovereignty, such as that of taxation, "so as to bind *future* legislatures, and any *contract* to "that effect is void."

"The rights of sovereignty are in trust to be exer- "cised for the benefit of the people, as occasion may "require; not to be abandoned or bargained away." 30 Penn. State R., 9, 27, 38; see also 1 Ohio State R., 698, 701, to the same effect; 10 N. H., 147.

The State, nor any auxiliary of it, as a municipal corporation, city or county, can be sued for any cause without permission of the State, and any act affording legal redress may at any time be repealed, no matter what rights have vested, without impairing any contract within the meaning of the constitution. 5 Cal., 288, 290; 20 How., 529, 530.

And if the State may deny legal remedies against itself and the sub-municipal governments created by it, then there can be no *contract* either between it or its sub-governments and another, capable of being impaired. It, *the State*, may deny all remedy, and of course, a particular remedy, by repealing a tax in which such remedy consists. The entire right to any remedy is merely permissive, and therefore such con-

tracts cannot be within the provision of the constitution relative to impairing contracts.

"The State has the power to create, modify or abol-
"ish, (municipal corporations); it has the power to
"decide in what manner the taxes shall be levied for
"its support, and how their debts shall be paid."
"This is a discretion vested in the legislature, and
"nothing prevents it from changing its policy."—
"The courts can only interfere when it has over-
"stepped the limits prescribed by the constitution."
12 La. Ann., 516, 517.

The legislature has plenary powers over the property and revenues of municipal corporations, and any statute providing what shall be done with or concerning such public property, is but a pledge of *public faith*, over which there is no judicial control.—Such stautes may be constitutionally repealed—and in regard to them, one legislature cannot bind another. 17 Georgia, 59, 60; 11 Texas, 705, 706.

"The county has got the stock which was the con-
"sideration of the subscription. The certificates or
"bonds, on the face of them, pledge the *faith, credit*
"*and property* of the county for the payment of both
"principal and interest." "It is a public loan on the
"faith of the public credit." "A pledge of the public
"faith ranks as an *imperfect obligation*, because no ac-
"tion at law ordinarily lies to enforce it. The State
"or community may furnish a qualified remedy
"against itself, but unless it do, the contract is reme-
"diless." 32 Penn. State R., 228.

"But if the *act* complained of be a violation of the

"contract between the State and the public creditor, "and an act of bad faith on the part of the legislature, "that would not authorize the maintainance of an ac- "tion. The State cannot be coerced into an observ- "ance of its contracts. It cannot be sued except by "its own consent, in a mode provided by law." "And "it is well settled, that *mandamus* will not lie against "a public officer, when it is in effect a suit against the "State, or to compel a public officer to do an act not "*clearly* defined and enjoined by law." 22 Texas, 31.

There is no vested right, in the sense of the constitution, in a cumulative statutory remedy, or in an extraordinary remedy to be pursued and made effectual through the action of political departments, or officers of the government. 6 Pick., 508; 4 Watts & Serg., 220; 46 Maine, 81; 47 Maine, 91; 18 Maine, 112; 42 Maine, 441.

II.

In this case there is no such contract, as in contemplation of law, can be impaired by the repeal or limitation of the city tax. The obligation of the bonds and coupons remaining perfect and the supposed contract impaired being an act of the legislature for levy and collection of future revenue, and affording a cumulative and extraordinary remedy, resting upon public faith only.

First. Because his contract is with a municipal corporation, a part and parcel of the State, created for purposes of civil government and not private interests, and exercising a part of the sovereignty of the State

for public and political purposes alone, and having (his contract) the same legal relations as if made directly with the State. And there was no execution of the statute repealed at the time of the repeal, in respect to what the relator seeks—the levy and appropriation of *future* taxes, which can be done alone through officers of the goverment exercising powers of its sovereignty.

Second. Because his contract and debt is against a political or local department of the State, whose existence, powers and duties all depend upon the legislative will—who cannot be sued without express permission, and as against whom all remedy may be taken away, and whose existence may at any time be terminated by the State. If then the municipality may be annihilated, his contract is but a *pledge of public faith*, and no contract within the meaning of the constitution, capable of enforcement by judicial action, except according to the legislative will, but an *imperfect obligation*, resting upon public faith, and dependent upon the exercise of the sovereign powers of the State for satisfaction in the manner now sought.

Third. Because if his contract was made with a view to any then existing provision for city taxes and appropriation to any particular *class* of debts of the city, he is presumed to have known the fundamental law of legislative power over municipal corporations, and over the public taxes, and is held to have taken his contract with the city, *subject* to the continuing powers of the legislature over the city, its powers of taxation, and the appropriation of its revenues.

Fourth. Admitting he has a perfect contract, vesting in him *certain, definite, absolute, fixed rights of property*, his contract is in no legal sense impaired by the act of 1863 fixing the *maximum* of taxation in the city of Quincy, because the *ordinary* remedies of action and satisfaction are left unaffected, and the *obligation* of the contract, the coupons, remain in full force, with, in contemplation of law, substantial legal remedies for enforcement. At most the repeal but takes away a statutory and cumulative remedy.

Fifth. In this proceeding, according to the relator's case, he could have had remedy by *mandamus* without judgment; for, as he claims, his right to payment was out of a specific fund, or tax. He has chosen to obtain judgment, and all his supposed contract rights to extraordinary remedy, with his contract, are merged in his judgment; therefore he occupies the position of all other judgment creditors. He must rely upon his judgment, its liens and incidents alone for enforcement.

Sixth. The contract supposed to be impaired by the repeal, is nothing more than acts of legislation providing for the collection of future taxes, and their application—requiring the agency of public officers in the execution of revenue laws, and implying provisions for enforcement of collection, and the election of officers clothed with coercive powers.

These are, in their nature, inalienable—incapable of being mortgaged or pledged—things appertaining to the government of the State, to be done *in futuro*, and a part of its machinery, always subject to the le-

gislative will. But by the act of 1851, relied upon, it is the tax only "when collected," that is to constitute "a fund pledged for the payment of interest."—By the terms of the act, then, there is nothing pledged or appropriated which a court can be called upon to enforce, except the application of the tax or fund *when collected.* The expression of one thing is the exclusion of another, and the expression is "when collected," and no intention appears to create a vested right in that which has but a potential existence, or to mortgage or contract away the legislative authority.

Seventh. The relator obtained judgment upon three several classes of coupons, issued each under different laws, and it cannot be contended that the act of 1851 had any application to the coupons made a debt of the city by the act of 1857. It has no reference to this debt. Having collectively merged these coupons in his judgment, he cannot enforce payment of this judgment under the provisions of a statute which applies to a portion only of the coupons upon which his judgment is founded. Nor does the writ disclose what portions were of the several classes, or identify the coupons. It is the judgment he seeks payment of, in a mode provided by a statute, (as we insist repealed), for the payment of a portion only of the debt for which he obtained his judgment. To allow this, is to extend the act to a subject to which it has no application, and reward the relator for confusion of his different supposed rights in one recovery.

III.

But should a peremptory mandamus be awarded, we insist that the Court commanding the levy of taxes by the city to the full extent of municipal authority, can only direct payment out of the proceeds, to the individual creditor, of any surplus which may remain in the treasury, after the ordinary current municipal expenses are provided for. This follows from the fact that the city is a political corporation for governmental purposes, and the interests of the public, or government, are paramount to those of individuals, and the individual is always postponed to the public demands.

The common law maxim is, "that it is better that individuals should suffer than the public be put to inconvenience." So the taxes of a city cannot be in any manner seized by a creditor. 1 Louisiana Ann., 435. Nor will a bill in equity lie to subject revenues of a county to satisfaction of its debts. 18 Ohio, 13. Nor is a set-off allowed against public revenue. 5 Munroe, 531; 3 Metcalf, 520. Nor can public revenues be garnisheed by a creditor. Nor can municipal corporations be garnisheed by a creditor of municipal officers or agents, to subject salary to officers debts.

Nor are they within ordinary statutes giving attachments, executions and remedies for satisfaction of recoveries, or requiring security for costs. 8 Maryland, 95, 100, et seq.; 25 Ill., 595; 23 Ill., 433.

The principle of the cases cited, and of the common

law is, that municipal corporations being a part of the government, the ordinary prerogatives and immunities, within the scope of their action, of the government apply to them.

But as to the revenue of cities, it is the food upon which they feed, and without which they must die. To deprive a city of the proceeds of its taxes, by forcing their application to pay the debts of individuals against it, is to kill it as effectually as by repeal of its charter, for all practical purposes.

~~SKINNER & MARSH,~~

Thomas Emmet & *for Def't in Error.*